

# **ATTACHMENT 13**

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Page 1

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF PENNSYLVANIA

3       IN RE:    PROCESSED EGG PRODUCTS :  
4       ANTITRUST LITIGATION               :  
5       -----:   MDL No. 2002  
6       THIS DOCUMENT RELATES TO:        :   08-MD-02002  
7       ALL DIRECT PURCHASER ACTIONS     :

8                               \*\* HIGHLY CONFIDENTIAL \*\*

9                       Tuesday, March 18, 2014

10  
11                       Videotaped 30(b)(6) deposition  
12       of Michael Foods, through TOBY LEE CATHERMAN,  
13       and deposition of TOBY LEE CATHERMAN, taken  
14       at the offices of Weil Gotshal & Manges LLP,  
15       1300 I Street NW, Suite 900, Washington, D.C.  
16       20005, beginning at 9:06 a.m., before LINDA  
17       ROSSI RIOS, a Federally Approved RPR, CCR and  
18       Notary Public.

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<p>Page 2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 BERNSTEIN LIEBHARD LLP</p> <p>4 BY: RONALD J. ARANOFF, ESQUIRE</p> <p>5 and</p> <p>6 DANA STATSKY SMITH, ESQUIRE</p> <p>7 10 East 40th Street</p> <p>8 22nd Floor</p> <p>9 New York, NY 10016</p> <p>10 212-779-1414</p> <p>11 aranoff@bernlieb.com</p> <p>12 dsmith@bernlieb.com</p> <p>13 On behalf of the Direct Purchaser Plaintiff</p> <p>14 Class</p> <p>15</p> <p>16 JENNER &amp; BLOCK, LLP</p> <p>17 BY: STEPHEN BROWN, ESQUIRE</p> <p>18 353 North Clark Street</p> <p>19 Chicago, IL 60654</p> <p>20 312-840-7282</p> <p>21 stephenbrown@jenner.com</p> <p>22 312-840-7282</p> <p>23 On behalf of the Direct Action Plaintiffs,</p> <p>24 Kraft, Kellogg, General Mills and Nestle</p> <p>25</p> <p>26 WEIL, GOTSHAL &amp; MANGES LLP</p> <p>27 BY: CARRIE M. ANDERSON, ESQUIRE</p> <p>28 1300 Eye Street, N.W.</p> <p>29 Suite 900</p> <p>30 Washington, D.C. 20005</p> <p>31 202-682-7231</p> <p>32 carrie.anderson@weil.com</p> <p>33 On behalf of Defendant, Michael Foods,</p> <p>34 Papetti's Hygrade Egg Products and Toby Lee</p> <p>35 Catherman</p>	<p>Page 4</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 FAEGRE BAKER DANIELS</p> <p>4 BY: KATHY L. OSBORN, ESQUIRE</p> <p>5 300 N. Meridian Street</p> <p>6 Suite 2700</p> <p>7 Indianapolis, IL 46204</p> <p>8 317-237-8261</p> <p>9 kathy.osborn@faegrebd.com</p> <p>10 On behalf of Midwest Poultry Services</p> <p>11 (Via teleconference)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26 ALSO PRESENT:</p> <p>27 TJ O'TOOLE, Videographer</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p>
<p>Page 3</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 PORTER, WRIGHT, MORRIS &amp; ARTHUR LLP</p> <p>4 BY: DONALD M. BARNES, ESQUIRE</p> <p>5 1900 K Street</p> <p>6 Suite 1100</p> <p>7 Washington, D.C. 20006</p> <p>8 202-778-3056</p> <p>9 dbarnes@porterwright.com</p> <p>10 On behalf of Rose Acre Farms</p> <p>11</p> <p>12 STINSON LEONARD STREET</p> <p>13 BY: WILLIAM L. GREENE, ESQUIRE</p> <p>14 150 South Fifth Street</p> <p>15 Suite 2300</p> <p>16 Minneapolis, MN 55402</p> <p>17 612-335-1568</p> <p>18 william.greene@stinsonleonard.com</p> <p>19 On behalf of Defendant, Michael Foods</p> <p>20 (Via teleconference)</p> <p>21</p> <p>22 PEPPER HAMILTON LLP</p> <p>23 BY: EVAN W. DAVIS, ESQUIRE</p> <p>24 3000 Two Logan square</p> <p>25 18th and Arch Streets</p> <p>26 Philadelphia, PA 19103</p> <p>27 215-981-4245</p> <p>28 davisew@pepperlaw.com</p> <p>29 On behalf of United Egg Producers and</p> <p>30 United States Egg Marketers</p> <p>31 (Via teleconference)</p> <p>32</p> <p>33 LOVELL STEWART HALEBIAN &amp; JACOBSON LLP</p> <p>34 BY: KEITH D. ESSENMACHER, ESQUIRE</p> <p>35 61 Broadway, Suite 501</p> <p>36 New York, NY 10006</p> <p>37 212-608-1900</p> <p>38 kessenmacher@lshllp.com</p> <p>39 On behalf the Indirect Purchaser Plaintiffs</p> <p>40 (Via teleconference)</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p>	<p>Page 5</p> <p>1 INDEX</p> <p>2 - - -</p> <p>3 Testimony of: TOBY LEE CATHERMAN</p> <p>4 By Ms. Smith 11</p> <p>5 By Mr. Brown 138</p> <p>6 By Mr. Essenmacher 200</p> <p>7 By Mr. Barnes 202</p> <p>8 By Ms. Anderson 210</p> <p>9</p> <p>10 - - -</p> <p>11 EXHIBITS</p> <p>12 - - -</p> <p>13 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>14</p> <p>15 Catherman-1 3/14/14 Letter 28</p> <p>16</p> <p>17 Catherman-2 Agenda,</p> <p>18 MFI0007203 36</p> <p>19 Catherman-3 11/15/04 E-mail with</p> <p>20 attachment,</p> <p>21 MFI0330628 - 0330630 37</p> <p>22 Catherman-4 11/19/04 Letter,</p> <p>23 MFI0615604 - 0615609 43</p> <p>24</p> <p>25 Catherman-5 E-mail chain,</p> <p>26 MFI0117419 &amp; 0117420 53</p> <p>27 Catherman-6 Michael Foods Animal</p> <p>28 Welfare document,</p> <p>29 MFI0322587 &amp; 0322588 60</p> <p>30 Catherman-7 12/16/08 E-mail with</p> <p>31 attachment,</p> <p>32 MFI0068418 - 0068446 73</p> <p>33</p> <p>34</p> <p>35</p>

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<p style="text-align: right;">Page 7</p> <p>1 EXHIBITS (cont'd.)</p> <p>2 - - -</p> <p>3 EXHIBIT NUMBER DESCRIPTION PAGE MARKED</p> <p>4</p> <p>5 Catherman-21 E-mail chain,</p> <p>6 MFI0617596 &amp; 0617597 173</p> <p>7 Catherman-22 10/5/06 E-mail with</p> <p>8 attachment,</p> <p>9 MFI0616647 - 0616653 176</p> <p>10 Catherman-23 1/29/03 E-mail,</p> <p>11 MFI0118191 - 0118193 192</p> <p>12</p> <p>13 Catherman-24 4/13/04 E-mail,</p> <p>14 MFI0330138 194</p> <p>15 Catherman-25 4/13/07 E-mail,</p> <p>16 MFI0097273 196</p> <p>17</p> <p>18 Catherman-26 E-mail chain,</p> <p>19 MFI0033487 &amp; 0033488 207</p> <p>20</p> <p>21 - - -</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1</p> <p>2 - - -</p> <p>3 VIDEOGRAPHER: On the record</p> <p>4 with disc number one of the video</p> <p>5 deposition of Toby Catherman taken in</p> <p>6 the matter of Processed Egg Products</p> <p>7 Antitrust Litigation being heard</p> <p>8 before the United States District</p> <p>9 Court for the Eastern District of</p> <p>10 Pennsylvania, MDL Number 2002.</p> <p>11 This deposition is being held at</p> <p>12 the offices of Weil Gotshall located</p> <p>13 at 1300 I Street, Northwest in</p> <p>14 Washington, D.C. on March 18, 2014, at</p> <p>15 approximately 9:06 a.m.</p> <p>16 My name is TJ O'Toole. I am a</p> <p>17 certified legal video specialist. The</p> <p>18 court reporter is Linda Rossi Rios.</p> <p>19 We are both here representing Veritext</p> <p>20 New York.</p> <p>21 Will counsel, please, introduce</p> <p>22 themselves and indicate which parties</p> <p>23 they represent?</p> <p>24 MS. SMITH: Dana Statsky Smith,</p> <p>25 Bernstein Liebhard, New York, New York</p>

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<p>1 2 for the Direct Purchaser Plaintiffs. 3 MR. ARANOFF: Ronald Aranoff, 4 Bernstein Liebhard, LLP, 10 East 40th 5 Street, New York, New York for the 6 Direct Purchaser Class Plaintiffs. 7 MR. BROWN: Stephen Brown, 8 Jenner and Block Chicago for Direct 9 Action Plaintiffs, Kraft, Kellogg, 10 General Mills and Nestle. 11 MS. ANDERSON: Carrie Anderson 12 with Weil Gotshall on behalf of 13 Michael Foods, Papetti's Hygrade Egg 14 Products and Mr. Catherman. 15 VIDEOGRAPHER: Thank you. I am 16 getting interference from someone's 17 cell phone. 18 Will the court reporter, please, 19 swear in the witness? 20 - - - 21 TOBY LEE CATHERMAN, after having 22 been first duly sworn, was examined 23 and testified as follows: 24 - - - 25 COURT REPORTER: Counsel on the</p>	<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL 2 Can you give your name and 3 address for the record, please? 4 A. It's Toby Catherman, 10 5 Chesterfield Drive, Palmyra, Pennsylvania 6 10708. 7 Q. Do you understand that you're 8 under oath today? 9 A. Yes. 10 Q. Have you ever been deposed 11 before? 12 A. Yes. 13 Q. When? 14 A. In the 1980s. 15 Q. What were the circumstances? 16 A. It was an accounts receivable 17 claim on some property and various other 18 funds for a company that I was president of 19 at the time. 20 Q. Was that a deposition? 21 A. Yes. 22 Q. And did you give any testimony 23 at trial? 24 A. No. 25 Q. Did that case have anything to</p>
Page 11	Page 13
<p>1 2 phone, would you like to make an 3 appearance on the record? 4 MR. ESSENMACHER: Yes, I would. 5 Thank you. 6 Keith Essenmacher from Lovell 7 Stewart Halebian &amp; Jacobson on behalf 8 of the Indirect Purchasers. 9 MR. DAVIS: Evan Davis from 10 Pepper Hamilton on behalf of United 11 Egg Producers, United States Egg 12 Marketers. 13 MR. GREENE: William Greene, 14 Stinson Leonard Street on behalf of 15 Michael Foods. 16 MS. OSBORN: Kathy Osborn, 17 Faegre Baker Daniels on behalf of 18 Midwest Poultry Services. 19 - - - 20 EXAMINATION 21 - - - 22 BY MS. SMITH: 23 Q. Good morning, Mr. Catherman. 24 My name is Dana Smith, and I represent the 25 Direct Purchaser Plaintiffs in this lawsuit.</p>	<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL 2 do with the egg industry? 3 A. Yes, it did. Well, it had to 4 do with accounts receivable of an egg 5 customer at that time that was based in Long 6 Island. And I was president of the company 7 which is now part of Michael Foods. At that 8 time it was called Quaker State Farms, 9 Incorporated. 10 Q. Is there anything that would 11 prevent you from speaking clearly and 12 testifying truthfully today? 13 A. No. 14 Q. When I say Michael Foods today, 15 I'm referring to Michael Foods, Incorporated 16 including any and all affiliated Michael 17 Foods companies and all the products 18 manufactured by the overall company unless I 19 otherwise specify. 20 A. Okay. 21 Q. Are you still employed at 22 Michael Foods? 23 A. Yes. 24 Q. What is that position? 25 A. I am just a part-time employee.</p>

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<p style="text-align: right;">Page 14</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 I retired from my full-time position in</p> <p>3 January of 2013.</p> <p>4 Q. What's the position?</p> <p>5 A. Today?</p> <p>6 Q. Uh-huh.</p> <p>7 A. I am working, assisting on</p> <p>8 counseling and training some of the people we</p> <p>9 brought in as my replacements. And I'm also</p> <p>10 representing the company with Urner Barry on</p> <p>11 a daily basis.</p> <p>12 Q. Let's go through some of the</p> <p>13 positions. Well, let's go back.</p> <p>14 What is the highest level of</p> <p>15 education you've attained?</p> <p>16 A. I have a -- just a BA in</p> <p>17 business administration with a second major</p> <p>18 in accounting.</p> <p>19 Q. From where?</p> <p>20 A. Kutztown State College.</p> <p>21 Q. And what was your first</p> <p>22 position in the food service industry?</p> <p>23 A. It was as controller of the</p> <p>24 company I mentioned, which was Quaker State</p> <p>25 Farms.</p>	<p style="text-align: right;">Page 16</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 positions?</p> <p>3 A. Concept trucking I was</p> <p>4 treasurer of. Egg specialties, I think I was</p> <p>5 vice president of that, which was a precooked</p> <p>6 operation based in Pennsylvania. Papetti</p> <p>7 Farms, which is a layer operation, and I was</p> <p>8 treasurer of that. And Sunbest-Papetti</p> <p>9 Farms, which is a joint company of Papetti</p> <p>10 Farms with another company, and I was vice</p> <p>11 president of that. I think I have them all.</p> <p>12 Q. It's a lot of positions.</p> <p>13 A. All at the same time.</p> <p>14 Q. Impressive.</p> <p>15 In your role at Papetti's, did</p> <p>16 you have responsibility for shell eggs as</p> <p>17 well as egg products?</p> <p>18 A. The purchase of shell eggs.</p> <p>19 When they first purchased Quaker State Farms</p> <p>20 we were a shell egg processor, we had spun</p> <p>21 that off to -- we maintained the facility,</p> <p>22 but we leased the facility to RW Sauder,</p> <p>23 along with the equipment as part of the</p> <p>24 lease. And that occurred within the first</p> <p>25 year that Papetti's owned Quaker State.</p>
<p style="text-align: right;">Page 15</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. How long were you there?</p> <p>3 A. From '79, '78 until 1987 when</p> <p>4 it was acquired by Papetti's Hygrade Egg.</p> <p>5 Q. So you were -- I'm sorry, you</p> <p>6 said you were the controller?</p> <p>7 A. Yes.</p> <p>8 Q. What did you do in that</p> <p>9 position?</p> <p>10 A. All the financial records and</p> <p>11 accounting and eventually then became</p> <p>12 president of the company.</p> <p>13 Q. And then you -- the company was</p> <p>14 acquired by Papetti's?</p> <p>15 A. Yes.</p> <p>16 Q. What did you do when the</p> <p>17 company was taken over?</p> <p>18 A. At Papetti's, I became vice</p> <p>19 president of Pennsylvania operations which</p> <p>20 entailed managing all the Pennsylvania</p> <p>21 operations but I also then went into other</p> <p>22 positions, then inside Papetti's as we</p> <p>23 started growing some other ancillary</p> <p>24 operations.</p> <p>25 Q. What were those other</p>	<p style="text-align: right;">Page 17</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. And so Papetti's never sold</p> <p>3 shell eggs?</p> <p>4 A. Except for that very small</p> <p>5 transitional period, correct.</p> <p>6 Q. And then Papetti's was an egg</p> <p>7 processor, so it purchased all of its eggs</p> <p>8 from another source?</p> <p>9 A. Yes.</p> <p>10 Q. Who was that?</p> <p>11 A. Various producers.</p> <p>12 Q. Can you name some?</p> <p>13 A. Probably Wenger Feed Mills,</p> <p>14 Esbenshade Farms, RW Sauder.</p> <p>15 Q. So you sold them and then</p> <p>16 bought them back?</p> <p>17 A. Yes.</p> <p>18 Q. And then how long were you at</p> <p>19 Papetti's?</p> <p>20 A. From '90 -- '89 when it was</p> <p>21 acquired -- when I -- when they acquired</p> <p>22 Quaker State, until '97 when it was -- when</p> <p>23 Papetti's was acquired by Michael Foods. So</p> <p>24 it's a continuous employment.</p> <p>25 Q. Now, when Papetti's was</p>

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<p style="text-align: right;">Page 18</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 acquired, what position did you take on at</p> <p>3 that point?</p> <p>4 A. Vice president of procurement.</p> <p>5 Q. Can you tell me a little bit</p> <p>6 about that position?</p> <p>7 A. As part of Michael Foods, it</p> <p>8 sources eggs from various regions in the</p> <p>9 country, most of it third party. It does</p> <p>10 have a production avenue itself, but the rest</p> <p>11 of the eggs are sourced from third parties,</p> <p>12 so I, along with Terry Baker, were</p> <p>13 responsible for sourcing all the eggs that</p> <p>14 were required based on the strategic plan and</p> <p>15 the sales plan. Part of that responsibility</p> <p>16 then would include negotiations of those</p> <p>17 agreements, spot purchasing and managing the</p> <p>18 quality and logistics systems that are a part</p> <p>19 of that.</p> <p>20 Q. That's a lot. So you sourced</p> <p>21 eggs from various regions, but you said it</p> <p>22 does have a production avenue itself. So</p> <p>23 there were internal shell eggs that you would</p> <p>24 pull from at Michael Foods?</p> <p>25 A. Michael Foods has its -- and</p>	<p style="text-align: right;">Page 20</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 partners? Were one of you superior to the</p> <p>3 other? How was your working relationship?</p> <p>4 A. Formally I reported to Terry</p> <p>5 Baker the entire time.</p> <p>6 Q. What was that entire time, that</p> <p>7 was from 1997 until?</p> <p>8 A. Until 2013.</p> <p>9 Q. And then -- so that brings us</p> <p>10 back to 2013. And now you're a part-time</p> <p>11 employee. What is your position now? What</p> <p>12 would you consider your title to be?</p> <p>13 A. I am just basically assisting</p> <p>14 in some ongoing training with some of the</p> <p>15 procurement staff. I'm the go-to if they</p> <p>16 have a call about, oh, agreements or various</p> <p>17 other things, more historical base questions,</p> <p>18 they'll pick up a phone and call me. But I</p> <p>19 also get and monitor some of the current</p> <p>20 buy/sell of Michael Foods when it comes to</p> <p>21 the bulk liquid of tankers and that type of</p> <p>22 stuff or shell eggs for breaking today so I</p> <p>23 can report those activities with Uner Barry.</p> <p>24 Q. Explain to me exactly what that</p> <p>25 means by monitoring the current buy/sell of</p>
<p style="text-align: right;">Page 19</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 today still has several million birds which</p> <p>3 are located on company owned facilities, the</p> <p>4 majority of them. There are a few contract</p> <p>5 layers. Those birds, from the time that I</p> <p>6 became part of Michael Foods, have been</p> <p>7 in-line broken, the entire process. So that</p> <p>8 liquid is then transferred to different</p> <p>9 processing facilities. The contract layers</p> <p>10 that Michael Foods has are primarily based in</p> <p>11 Nebraska, in that immediate area, and we use</p> <p>12 those shell eggs primarily for our hard</p> <p>13 cooking operation in the Midwest. And then</p> <p>14 we do have one farm in Minnesota which did a</p> <p>15 small amount of grading for the Crystal Label</p> <p>16 Program that was mostly basically selling in</p> <p>17 the Upper Midwest. It's probably less than</p> <p>18 half of a percent of our sales or something</p> <p>19 like that. It's very minor.</p> <p>20 Q. So when you say they do some</p> <p>21 grading, that means that they were selling</p> <p>22 the actual shell eggs?</p> <p>23 A. Yes.</p> <p>24 Q. Now, you said that you worked</p> <p>25 along with Terry Baker. Did you work as</p>	<p style="text-align: right;">Page 21</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Michael Foods.</p> <p>3 A. Michael Foods has strategic</p> <p>4 plan which it has always had. It is -- there</p> <p>5 is established a certain percentage of our</p> <p>6 supply which we call spot. Spot in our</p> <p>7 definition is less than one year, so they</p> <p>8 could be three month agreements, they could</p> <p>9 be no agreement at all and we're just buying</p> <p>10 them off of ECI. Those -- that supply is</p> <p>11 purchased ongoing, sometimes weekly,</p> <p>12 sometimes daily to meet the longs and shorts</p> <p>13 as our sales fluctuate and/or seasonal demand</p> <p>14 fluctuates and/or availability of product.</p> <p>15 Q. What's ECI?</p> <p>16 A. Egg Clearinghouse, Incorporated.</p> <p>17 Q. Now, I'm going to go back to</p> <p>18 your position before you became a consultant</p> <p>19 when you were VP of procurement. So you</p> <p>20 reported to Terry Baker?</p> <p>21 A. Yes.</p> <p>22 Q. Did you report to anybody else?</p> <p>23 A. Through Terry Baker, yes.</p> <p>24 Q. Who is that?</p> <p>25 A. It would have been dependent on</p>

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<p style="text-align: right;">Page 22</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 who the president of the egg company was at</p> <p>3 the time, so it could have been William</p> <p>4 Gaucher, JD Carlson. So it was various</p> <p>5 others, you know, depending upon how the</p> <p>6 senior management changed or progressed over</p> <p>7 the years.</p> <p>8 Q. And did anybody report to you?</p> <p>9 A. Yes.</p> <p>10 Q. And who was that?</p> <p>11 A. Her name is Joanne Raybuck.</p> <p>12 Q. Anybody else?</p> <p>13 A. Indirectly the Wakefield staff</p> <p>14 of Lowell Ostrand is a dotted line to Terry</p> <p>15 Baker and myself.</p> <p>16 Q. The Wakefield staff of -- I'm</p> <p>17 sorry, what was the place?</p> <p>18 A. In Wakefield, that's the</p> <p>19 Wakefield office where Terry is based, Lowell</p> <p>20 Ostrand.</p> <p>21 Q. That's who reported to Terry?</p> <p>22 A. And myself, yes.</p> <p>23 Q. Do you have an understanding of</p> <p>24 what this case is about?</p> <p>25 A. Vague.</p>	<p style="text-align: right;">Page 24</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Barry?</p> <p>3 A. No.</p> <p>4 Q. So how does that relationship</p> <p>5 work?</p> <p>6 A. Urner Barry is a market</p> <p>7 reporting system which I'm sure you're fully</p> <p>8 aware of. So their objective is to report</p> <p>9 valuations of egg products. One of those egg</p> <p>10 products obviously is breaking stock and raw</p> <p>11 liquids. As we trade or purchase breaking</p> <p>12 stock and/or raw liquids with other suppliers</p> <p>13 that are not contractual, those values we</p> <p>14 report to Urner Barry on a daily basis. I</p> <p>15 also report to Urner Barry spot trades or</p> <p>16 short term contracts we may do on finish</p> <p>17 products. That they quote on. They don't</p> <p>18 quote on precooked or various other products,</p> <p>19 but they would quote on frozen containers or</p> <p>20 tankers or dry products or some of those</p> <p>21 products. So it's rather limited, the</p> <p>22 information that we exchange.</p> <p>23 Q. Before you came today, did you</p> <p>24 discuss the fact that you were coming to be</p> <p>25 deposed with Terry Baker?</p>
<p style="text-align: right;">Page 23</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. What is that vague</p> <p>3 understanding?</p> <p>4 A. That it's alleged that the</p> <p>5 shell egg processors primarily try to create</p> <p>6 a means of which to raise margins or whatever</p> <p>7 in the marketplace by having the Animal</p> <p>8 Welfare Program and also various other</p> <p>9 activities that they might have done before</p> <p>10 that or by a result of their Marketing</p> <p>11 Committee of the UEP.</p> <p>12 Q. What's the basis of that</p> <p>13 understanding?</p> <p>14 A. Primarily just reading press</p> <p>15 releases from UEP and the press.</p> <p>16 Q. What source in the press?</p> <p>17 A. Feedstuffs I think would</p> <p>18 probably be one. Watts Publishing I think is</p> <p>19 what they call themselves. I think Urner</p> <p>20 Barry at times has reported on some of the</p> <p>21 activities.</p> <p>22 Q. Now, when you -- you spoke</p> <p>23 about Urner Barry before, that you have a</p> <p>24 position where you're reporting on Michael</p> <p>25 Foods to Urner Barry. Do you work for Urner</p>	<p style="text-align: right;">Page 25</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. What about Gregg Ostrander?</p> <p>4 A. No.</p> <p>5 Q. Or Tim Bebee?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss -- did you have</p> <p>8 any discussions with them at all prior to</p> <p>9 coming in today?</p> <p>10 A. That's a vague question. I'm</p> <p>11 not sure what you mean by that.</p> <p>12 Q. In the last six months, have</p> <p>13 you spoken to Terry Baker?</p> <p>14 A. Yes, spoke to Terry Baker last</p> <p>15 week. I still technically report to him, so</p> <p>16 we speak probably once a week about my</p> <p>17 activities for -- on his behalf.</p> <p>18 Q. And did you speak in any way,</p> <p>19 shape or form about the fact that you were</p> <p>20 testifying today?</p> <p>21 A. No.</p> <p>22 Q. Did you speak about his</p> <p>23 testimony?</p> <p>24 A. No.</p> <p>25 Q. What about Mr. Ostrander, have</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 26</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 you spoken with him in the last six months?</p> <p>3 A. Probably in the last five</p> <p>4 years.</p> <p>5 Q. Have you spoken to Tim Bebee in</p> <p>6 the last six months?</p> <p>7 A. No.</p> <p>8 Q. Did you review any of their</p> <p>9 transcripts prior to your deposition today?</p> <p>10 A. No.</p> <p>11 Q. Did you do anything to prepare</p> <p>12 for this deposition today?</p> <p>13 A. Yes. Only I've met with Carrie</p> <p>14 Anderson in January for part of the day to go</p> <p>15 through the logistics of this, and also with</p> <p>16 Carrie and William Greene.</p> <p>17 Q. Was there -- did you have a</p> <p>18 face-to-face meeting with them?</p> <p>19 A. Yes.</p> <p>20 Q. When you met with Carrie and</p> <p>21 William Greene, was that more recently than</p> <p>22 January?</p> <p>23 A. Just yesterday.</p> <p>24 Q. Did you -- was there anybody on</p> <p>25 the phone when you had that meeting?</p>	<p style="text-align: right;">Page 28</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 designee today?</p> <p>3 A. Yes.</p> <p>4 Q. And do you know what you've</p> <p>5 been designated to speak about?</p> <p>6 A. I forgot the subject, but yes.</p> <p>7 Q. If I showed you a letter, do</p> <p>8 you believe your recollection could be</p> <p>9 refreshed?</p> <p>10 A. I'm sure. I enjoyed my</p> <p>11 retirement away from the egg industry.</p> <p>12 MS. SMITH: I'm going to mark</p> <p>13 this document.</p> <p>14 - - -</p> <p>15 (Exhibit Catherman-1, 3/14/14</p> <p>16 Letter, was marked for identification.)</p> <p>17 - - -</p> <p>18 MS. ANDERSON: The record can</p> <p>19 reflect that Mr. Barnes has joined us.</p> <p>20 THE WITNESS: Yes, I recall now.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. So, Mr. Catherman, do you know</p> <p>23 what topic you're here to discuss today as a</p> <p>24 corporate designee?</p> <p>25 A. Yes. It's listed here as my</p>
<p style="text-align: right;">Page 27</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. No.</p> <p>3 Q. Was there anybody else in the</p> <p>4 room?</p> <p>5 A. No.</p> <p>6 Q. Did you review any documents in</p> <p>7 preparation for your deposition?</p> <p>8 MS. ANDERSON: Mr. Catherman,</p> <p>9 you can answer that question yes or</p> <p>10 no.</p> <p>11 THE WITNESS: Yes.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. Did you review any documents</p> <p>14 independently outside the presence of</p> <p>15 counsel?</p> <p>16 A. No.</p> <p>17 Q. Approximately how many?</p> <p>18 A. Probably 15 yesterday.</p> <p>19 Q. During the course of your work</p> <p>20 at Michael Foods, if you had a question about</p> <p>21 legal issues, who would you ask them of?</p> <p>22 A. I would call Cary Wolski who is</p> <p>23 the general counsel.</p> <p>24 Q. Do you understand that you've</p> <p>25 been designated to speak as a corporate</p>	<p style="text-align: right;">Page 29</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 membership and participation in UEP.</p> <p>3 Q. Including elected and appointed</p> <p>4 positions you held, committees that you</p> <p>5 served on, your meeting attendance, motions</p> <p>6 made and votes taken at all UEP meetings?</p> <p>7 MS. ANDERSON: With the caveat,</p> <p>8 Dana, including the second sentence.</p> <p>9 BY MS. SMITH:</p> <p>10 Q. Including, with the caveat that</p> <p>11 it's limited to your own personal</p> <p>12 participation in UEP related activities.</p> <p>13 A. Correct.</p> <p>14 Q. What is the United Egg</p> <p>15 Producers?</p> <p>16 A. It's a Capper-Volstead co-op.</p> <p>17 Q. What is a Capper-Volstead</p> <p>18 co-op?</p> <p>19 A. I've never had this explained</p> <p>20 to me by legal counsel, so my opinion is that</p> <p>21 it is a co-op of producers that acts beyond</p> <p>22 their trade association into the point that</p> <p>23 they can also discuss pricing and indexes</p> <p>24 that are used to arrive at pricing. Thus</p> <p>25 some of the Market Committee activities that</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 30</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 we're involved inside UEP.</p> <p>3 Q. What's the basis for that</p> <p>4 understanding?</p> <p>5 A. I think it's just -- I really</p> <p>6 couldn't define it. It's just really just</p> <p>7 general knowledge or my perceived -- my</p> <p>8 perception.</p> <p>9 Q. How did you come to that</p> <p>10 perception?</p> <p>11 A. Sitting at a UEP meeting, any</p> <p>12 of the UEP meetings, you constantly heard</p> <p>13 about the Capper-Volstead exceptions and et</p> <p>14 cetera.</p> <p>15 Q. Who explained those to you?</p> <p>16 A. Counsel.</p> <p>17 Q. Do you know who that was?</p> <p>18 A. Various times, I think it could</p> <p>19 have already been Ike, Irving Isaacson I</p> <p>20 think his name was, and then various other</p> <p>21 counsel that UEP had along with Mike McLeod.</p> <p>22 Q. Who is Mike McLeod?</p> <p>23 A. He was their counsel for UEP.</p> <p>24 He was also part of their lobbying effort.</p> <p>25 Q. Who is Mr. -- I think you said</p>	<p style="text-align: right;">Page 32</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Foundation.</p> <p>3 MR. DAVIS: Objection. Lacks</p> <p>4 foundation. Calls for speculation.</p> <p>5 This is Evan Davis.</p> <p>6 BY MS. SMITH:</p> <p>7 Q. You can answer if you know.</p> <p>8 A. I don't know.</p> <p>9 MS. ANDERSON: Just so you know,</p> <p>10 Mr. Catherman, Mr. Davis is UEP's</p> <p>11 counsel, so you may hear voices coming</p> <p>12 over the phone, but you can still</p> <p>13 answer the question.</p> <p>14 BY MS. SMITH:</p> <p>15 Q. Michael Foods is a member of</p> <p>16 the United Egg Producers?</p> <p>17 A. Yes.</p> <p>18 Q. If I use UEP, do you have an</p> <p>19 understanding that I mean United Egg</p> <p>20 Producers?</p> <p>21 A. Yes. You'll have me saying</p> <p>22 UEP. I don't say United Egg Producers.</p> <p>23 Q. Okay. Do you know when Michael</p> <p>24 Foods became a member of UEP?</p> <p>25 A. No, I do not.</p>
<p style="text-align: right;">Page 31</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Irvingson?</p> <p>3 A. He was their general counsel</p> <p>4 early on. Probably 15 years ago.</p> <p>5 Q. Let's go back to your -- so you</p> <p>6 said that a Capper-Volstead co-op can discuss</p> <p>7 some of the Market Committee activities that</p> <p>8 were involved inside UEP. What do you mean</p> <p>9 by that?</p> <p>10 A. I'm not sure exactly what I did</p> <p>11 say, but I do recall that UEP had a Marketing</p> <p>12 Committee. In that Marketing Committee they</p> <p>13 would talk about various indexes and various</p> <p>14 carton surveys they would do so they could</p> <p>15 gather information about cost structures,</p> <p>16 grade yields and that type of stuff and</p> <p>17 provide it to Urner Barry as a way of</p> <p>18 improving the reporting values on various</p> <p>19 Urner Barry quoted products like cartoned</p> <p>20 eggs versus loose. All on the shell egg side</p> <p>21 of which I was never involved in, but...</p> <p>22 Q. Why was the fact that UEP was a</p> <p>23 Capper-Volstead co-op important when they</p> <p>24 were discussing those topics?</p> <p>25 MS. ANDERSON: Objection.</p>	<p style="text-align: right;">Page 33</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Was it a member when you became</p> <p>3 employed by Michael Foods?</p> <p>4 A. Best of my recall, yes.</p> <p>5 Q. And now as an employee of</p> <p>6 Michael Foods, you were representative at</p> <p>7 UEP?</p> <p>8 MS. ANDERSON: Objection.</p> <p>9 THE WITNESS: I was not the</p> <p>10 formal representative of Michael Foods</p> <p>11 at UEP at any given time.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. Did you sit on any committees</p> <p>14 as a member -- as a Michael Foods</p> <p>15 representative at UEP?</p> <p>16 A. No.</p> <p>17 MS. ANDERSON: Same --</p> <p>18 BY MS. SMITH:</p> <p>19 Q. Were you an independent member</p> <p>20 of UEP?</p> <p>21 A. No.</p> <p>22 Q. Did you attend UEP meetings?</p> <p>23 A. A few.</p> <p>24 Q. Did you attend out of your own</p> <p>25 interest?</p>

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<p style="text-align: right;">Page 34</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Most cases I would attend the</p> <p>3 legislative meetings they would have annually</p> <p>4 in Washington in May. That was an</p> <p>5 opportunity because most of our suppliers</p> <p>6 would be in town and so we use that as an</p> <p>7 opportunity to meet with them also to go over</p> <p>8 ongoing contractual discussions, projects</p> <p>9 that we had under way. So as a means of</p> <p>10 convenience of location of having many people</p> <p>11 in the industry in the same place.</p> <p>12 Q. Were you on any committees of</p> <p>13 the UEP?</p> <p>14 A. Not that I recall.</p> <p>15 Q. Were you a member of the board</p> <p>16 of the UEP?</p> <p>17 A. No.</p> <p>18 Q. Who is Larry Seger?</p> <p>19 A. Larry Seger was the -- I</p> <p>20 believe his title was president of Wabash</p> <p>21 Valley, and they have ancillary companies</p> <p>22 also.</p> <p>23 Q. What does Wabash Valley do?</p> <p>24 A. It is an egg producer. And</p> <p>25 they also do egg products.</p>	<p style="text-align: right;">Page 36</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 subjects.</p> <p>3 - - -</p> <p>4 (Exhibit Catherman-2, Agenda,</p> <p>5 Bates MFI0007203, was marked for</p> <p>6 identification.)</p> <p>7 - - -</p> <p>8 BY MS. SMITH:</p> <p>9 Q. Mr. Catherman, I'm showing you</p> <p>10 a document Bates stamped MFI0007203. It's</p> <p>11 titled "Egg Industry Economic Summit, Demand</p> <p>12 - Supply Trends Today &amp; The Future" from</p> <p>13 November 16, 2004, and it's an agenda?</p> <p>14 A. Yes.</p> <p>15 Q. Now, if you look at number 5,</p> <p>16 it's titled "Egg Product Trends." And it</p> <p>17 says, "Larry Seger &amp; Toby Catherman." Is</p> <p>18 this the presentation that we were just</p> <p>19 discussing?</p> <p>20 A. Yes.</p> <p>21 Q. Now, in this agenda it</p> <p>22 indicates that you and Mr. Seger were giving</p> <p>23 the presentation together. Is that</p> <p>24 incorrect?</p> <p>25 MS. ANDERSON: Objection.</p>
<p style="text-align: right;">Page 35</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you know any of the Wabash</p> <p>3 Valley ancillary companies?</p> <p>4 A. Yes. It would be Ballas Egg</p> <p>5 Products and Brown Produce. And they have</p> <p>6 their layers in a separate company, I don't</p> <p>7 remember the name of that.</p> <p>8 Q. In 2004, did you give a</p> <p>9 presentation at the UEP Economic Summit?</p> <p>10 A. Yes.</p> <p>11 Q. What was the topic of that</p> <p>12 presentation?</p> <p>13 A. I've been invited to come in</p> <p>14 and speak to the UEP members that were</p> <p>15 present about the egg products industry.</p> <p>16 Q. And did you give that</p> <p>17 presentation by yourself?</p> <p>18 A. I gave my presentation by</p> <p>19 myself, but there were other presentations</p> <p>20 made.</p> <p>21 Q. Who made the other</p> <p>22 presentations?</p> <p>23 A. I know Larry Seger gave a</p> <p>24 presentation. And I believe there were</p> <p>25 others, but I don't recall who or their</p>	<p style="text-align: right;">Page 37</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 That's not what it says.</p> <p>3 THE WITNESS: I agree with</p> <p>4 counsel, that's not what it's saying.</p> <p>5 It's saying that two individuals are</p> <p>6 giving presentations.</p> <p>7 MS. SMITH: Okay.</p> <p>8 MR. BARNES: Was this marked, by</p> <p>9 the way?</p> <p>10 MS. ANDERSON: It was marked as</p> <p>11 Exhibit 2.</p> <p>12 - - -</p> <p>13 (Exhibit Catherman-3, 11/15/04</p> <p>14 E-mail with attachment, Bates</p> <p>15 MFI0330628 - MFI0330630, was marked</p> <p>16 for identification.)</p> <p>17 - - -</p> <p>18 MS. ANDERSON: I'm assuming you</p> <p>19 would like the witness to read the</p> <p>20 document?</p> <p>21 MS. SMITH: Right. Correct.</p> <p>22 BY MS. SMITH:</p> <p>23 Q. This is Catherman Exhibit</p> <p>24 Number 3, Bates number MFI0330628 through 30.</p> <p>25 It's an e-mail and attachment from</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 38</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 November 15, 2004, from Toby Catherman to</p> <p>3 Larry Seger with a copy to Richard Brown with</p> <p>4 the subject, "UEP Economic Summit 11-16-04."</p> <p>5 A. [Reviewing document.] Okay.</p> <p>6 Q. Mr. Catherman, is this an</p> <p>7 outline of the presentation that you gave?</p> <p>8 A. It's an outline of my thoughts</p> <p>9 that I was going to be giving at that</p> <p>10 presentation, yes. I'm not sure it's even</p> <p>11 the final draft at this point.</p> <p>12 Q. Did this in any way cover any</p> <p>13 of Mr. Seger's presentation?</p> <p>14 A. No.</p> <p>15 Q. So let's go through some of the</p> <p>16 points in the document. If you move down</p> <p>17 towards the middle of the page, it says</p> <p>18 there's a "Trend toward continued growth of</p> <p>19 in-line breaking." Correct?</p> <p>20 A. Yes.</p> <p>21 Q. And "Followed a movement in</p> <p>22 shell processing started around 1970 with</p> <p>23 small in-line operations of less than 200,000</p> <p>24 layers when house size was only 30-40,000."</p> <p>25 MS. ANDERSON: Is there a</p>	<p style="text-align: right;">Page 40</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 provide a steady high quality egg supply.</p> <p>3 The historical base of egg products has been</p> <p>4 to use under grades and/or the surplus eggs</p> <p>5 from the shell egg industry. That supply</p> <p>6 varies in availability and quality. So to</p> <p>7 meet customer demand and especially inside</p> <p>8 Michael Foods, we started and the egg</p> <p>9 industry started to do in-line production</p> <p>10 that allowed for total control by the egg</p> <p>11 products company of all aspects of cost,</p> <p>12 quality and availability. That was started</p> <p>13 by Michael Foods and other companies early on</p> <p>14 in the '80s and continued to, but really</p> <p>15 expanded in the 1990s, really driven as a</p> <p>16 requirement inside for Michael Foods to</p> <p>17 supply our ESL category.</p> <p>18 Q. What is ESL category?</p> <p>19 A. Extended shelf life.</p> <p>20 Q. Tell me what in-line production</p> <p>21 is.</p> <p>22 A. Instead of having independent</p> <p>23 layer facilities, and, again, I call them</p> <p>24 layer houses, in the Midwest they'll call</p> <p>25 them barns, so depending upon who you're</p>
<p style="text-align: right;">Page 39</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 question?</p> <p>3 MS. SMITH: There is.</p> <p>4 BY MS. SMITH:</p> <p>5 Q. Is that what it says?</p> <p>6 A. Yes.</p> <p>7 Q. And then later in the document,</p> <p>8 if you move -- continue to move down, the</p> <p>9 document continues to discuss the growth of</p> <p>10 in-line breaking?</p> <p>11 MS. ANDERSON: Objection. The</p> <p>12 document speaks for itself.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Is that what it says?</p> <p>15 A. That would be -- it speaks to</p> <p>16 various points of reasons of why in-line</p> <p>17 breaking was expanding.</p> <p>18 Q. Why was in-line breaking</p> <p>19 expanding?</p> <p>20 A. I can read the document here, I</p> <p>21 can cite it.</p> <p>22 Q. Please do.</p> <p>23 A. At that time, processors were</p> <p>24 having various economic pressures and food</p> <p>25 safety pressures from our customer base to</p>	<p style="text-align: right;">Page 41</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 speaking to, you'll get different references.</p> <p>3 All I know is on an individual facility you</p> <p>4 have a single house and then historically</p> <p>5 those eggs would have to be packed onto some</p> <p>6 kind of bulk packing, plastic flats or</p> <p>7 whatever, and then transported to a central</p> <p>8 processing center. An in-line processing</p> <p>9 facility allows for you to put multiple of</p> <p>10 those houses together with a common belt</p> <p>11 which would then convey those eggs into a</p> <p>12 central processing room which in the early</p> <p>13 part of in-lines were all shell eggs led by</p> <p>14 Rose Acre and other companies, and Waldbaum.</p> <p>15 And then it evolved into the point that then</p> <p>16 Michael Foods started to, under Waldbaum at</p> <p>17 that time, to actually break those eggs on</p> <p>18 the farm and then transport the liquid to a</p> <p>19 processing center to be pasteurized and</p> <p>20 packaged.</p> <p>21 Q. Now, on the second page of the</p> <p>22 document, you wrote, Today we have</p> <p>23 approximately 40 million layers being broken</p> <p>24 in-line which is equivalent to 38 percent of</p> <p>25 all cases broken. This means we have</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 42</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 approximately 800,000 cases weekly being</p> <p>3 transported to off-line sites. Correct?</p> <p>4 A. That's what is cited here, yes.</p> <p>5 Q. Now, at the bottom of the page,</p> <p>6 it says, "50% by 2008 (10 million layers by</p> <p>7 construction and conversion), move toward 60%</p> <p>8 before slowing pace."</p> <p>9 What did you mean by that?</p> <p>10 A. My point being there is that as</p> <p>11 my point up above, 40 million birds roughly</p> <p>12 in-line. I saw it by moving to roughly 50</p> <p>13 million birds or 50 percent being in-line</p> <p>14 availability for the egg products industry</p> <p>15 and then that would expand eventually to</p> <p>16 60 percent of all eggs be broken in-line,</p> <p>17 which it is today.</p> <p>18 Q. So that was true?</p> <p>19 A. Yeah, I'm a pretty good</p> <p>20 forecaster. Ten years ago.</p> <p>21 Q. Is it still at 60 percent in</p> <p>22 2014?</p> <p>23 A. I think a couple weeks ago it</p> <p>24 was 62 percent. So it varies weekly.</p> <p>25 Q. Impressive.</p>	<p style="text-align: right;">Page 44</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Meet Market Needs" option statements.</p> <p>3 A. I'll read it first, depending</p> <p>4 upon what you want to ask me, because this</p> <p>5 letter obviously is not addressed to me.</p> <p>6 Q. Have you ever seen this letter</p> <p>7 of before?</p> <p>8 MS. ANDERSON: Have you read the</p> <p>9 letter, Mr. Catherman?</p> <p>10 THE WITNESS: No, I've not. Let</p> <p>11 me read it.</p> <p>12 [Reviewing document.]</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Have you ever seen this letter</p> <p>15 before?</p> <p>16 A. I'm going to use the word</p> <p>17 "assume" which I hate to use, but I believe I</p> <p>18 probably have. I don't recall actually it.</p> <p>19 But it was addressed to Terry. And often</p> <p>20 these types of industry updates or summaries</p> <p>21 would then be copied to me.</p> <p>22 Q. Now that you're looking at this</p> <p>23 letter, do you recall seeing the subject</p> <p>24 matter of this letter before?</p> <p>25 MS. ANDERSON: Objection. Form.</p>
<p style="text-align: right;">Page 43</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Did you receive letters from</p> <p>3 the UEP?</p> <p>4 A. I wouldn't say they were</p> <p>5 letters. I received newsletters and blanket</p> <p>6 invitations to meetings and various other</p> <p>7 things, blanket e-mailings that they sent to</p> <p>8 their membership.</p> <p>9 Q. Do you recall receiving a</p> <p>10 letter subsequent to this presentation</p> <p>11 relaying information about the presentation</p> <p>12 you gave?</p> <p>13 A. No.</p> <p>14 - - -</p> <p>15 (Exhibit Catherman-4, 11/19/04</p> <p>16 Letter, Bates MFI0615604 - MFI0615609,</p> <p>17 was marked for identification.)</p> <p>18 - - -</p> <p>19 BY MS. SMITH:</p> <p>20 Q. I'm showing you what is -- has</p> <p>21 been marked as Catherman-4. It's Bates</p> <p>22 stamped MFI0615604 through MFI0615609. It's</p> <p>23 titled, "United Egg Producers." Appears to</p> <p>24 be a letter from the United Egg Producers</p> <p>25 along with the agenda and to -- "Intention to</p>	<p style="text-align: right;">Page 45</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: Not really.</p> <p>3 BY MS. SMITH:</p> <p>4 Q. I just want to move to the page</p> <p>5 Bates stamped ending in 07. It's the agenda</p> <p>6 from the Egg Industry Economic Summit. You</p> <p>7 gave a presentation, as we discussed before.</p> <p>8 Did you attend the entire day of the summit?</p> <p>9 A. I believe I did.</p> <p>10 Q. And so attending the summit,</p> <p>11 did you attend all of these presentations on</p> <p>12 the agenda?</p> <p>13 A. I don't exactly recall if I did</p> <p>14 or not.</p> <p>15 Q. Do you recall attending many of</p> <p>16 these presentations?</p> <p>17 MS. ANDERSON: Objection.</p> <p>18 THE WITNESS: Not really.</p> <p>19 BY MS. SMITH:</p> <p>20 Q. Let's go back to the first page</p> <p>21 of the document ending in 604. The first</p> <p>22 page, in the middle of the page, the</p> <p>23 statement starts with "Shocking..." Do you</p> <p>24 see where I'm indicating?</p> <p>25 A. Yes.</p>

12 (Pages 42 - 45)

## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 46</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. So the statement reads,</p> <p>3 shocking eye opening information that had</p> <p>4 never been candidly expressed about the</p> <p>5 trends of the egg breaking products industry</p> <p>6 and the retail business caught the attention</p> <p>7 of all the attendees.</p> <p>8 MS. ANDERSON: I think you</p> <p>9 missed a couple of words, but...</p> <p>10 BY MS. SMITH:</p> <p>11 Q. Okay. I'll reread it again to</p> <p>12 be clear. "Shocking" - 'Eye Opening'</p> <p>13 information that had never before been</p> <p>14 candidly expressed about the trends of the</p> <p>15 egg breaking/products industry and the retail</p> <p>16 business caught the attention of all the</p> <p>17 attendees."</p> <p>18 The presentation or the</p> <p>19 information candidly expressed about the</p> <p>20 trends of the egg breaking products industry,</p> <p>21 was that your presentation?</p> <p>22 A. I would assume that's what he's</p> <p>23 referencing to.</p> <p>24 Q. Now, let's move to the next</p> <p>25 page ending in 605. And if you go to the</p>	<p style="text-align: right;">Page 48</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 presentation, did anybody ask any questions?</p> <p>3 A. Again, I don't recall. It's</p> <p>4 ten years ago.</p> <p>5 Q. After your presentation, did</p> <p>6 the UEP present "a bleak over-view of the</p> <p>7 supply side of the business and the pending</p> <p>8 problems with an ever-increasing flock size</p> <p>9 at a time when demand appears to be</p> <p>10 diminishing."</p> <p>11 MS. ANDERSON: Are you reading</p> <p>12 from the document?</p> <p>13 MS. SMITH: I am.</p> <p>14 MS. ANDERSON: Can you tell me</p> <p>15 where?</p> <p>16 THE WITNESS: The next bullet</p> <p>17 point.</p> <p>18 MS. SMITH: Thank you.</p> <p>19 THE WITNESS: That is what's</p> <p>20 cited here in the document. Again, I</p> <p>21 don't remember the -- who said what</p> <p>22 sequence of presentation, that type of</p> <p>23 stuff.</p> <p>24 BY MS. SMITH:</p> <p>25 Q. Do you recall we -- and based</p>
<p style="text-align: right;">Page 47</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 second bullet point, it states, "Probably the</p> <p>3 most shocking news came from Larry Seger and</p> <p>4 Toby Catherman when they presented a report</p> <p>5 on the current conditions of the egg</p> <p>6 breaking/products business and the trends of</p> <p>7 that industry."</p> <p>8 Is that correct?</p> <p>9 A. That's what it says here, yes.</p> <p>10 Q. On November 16, 2004, did</p> <p>11 members of the UEP express shock to you about</p> <p>12 the current conditions of the egg breaking</p> <p>13 products business?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you have a discussion with</p> <p>16 Gene Gregory about his surprise over the</p> <p>17 current conditions of the egg breaking</p> <p>18 products business?</p> <p>19 MS. ANDERSON: Objection.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: I don't recall</p> <p>22 having a conversation with Gene</p> <p>23 Gregory about the presentation.</p> <p>24 BY MS. SMITH:</p> <p>25 Q. After you gave your</p>	<p style="text-align: right;">Page 49</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 on the document, I'm guessing that the UEP</p> <p>3 then asked the attendees if they wanted to be</p> <p>4 part of the solution in managing the supply</p> <p>5 to meet an expected demand as stated in the</p> <p>6 letter on the bottom of the page?</p> <p>7 MR. DAVIS: Objection to form.</p> <p>8 THE WITNESS: I do recall that</p> <p>9 UEP did try to solicit participation</p> <p>10 in early molts. And that's all I</p> <p>11 recall at this point.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. Moving to the second to the</p> <p>14 last page ending in 608, it's titled,</p> <p>15 "Intention to Meet Market Needs." It's</p> <p>16 titled, "Option #1."</p> <p>17 "It is my company's intention</p> <p>18 to dispose of hens that are currently</p> <p>19 scheduled for disposal between January 1 and</p> <p>20 April 30, 2005 - four...weeks earlier than</p> <p>21 previously scheduled."</p> <p>22 Now, earlier you stated I do</p> <p>23 recall that UEP did try to solicit</p> <p>24 participation in early molts, and that's all</p> <p>25 I recall at this point. Is this Option</p>

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<p style="text-align: right;">Page 50</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Number 1 representative of that UEP -- strike</p> <p>3 that.</p> <p>4 Is Option Number 1</p> <p>5 representative of what the UEP was trying to</p> <p>6 solicit participation of?</p> <p>7 MS. ANDERSON: Object to the</p> <p>8 form of the question.</p> <p>9 THE WITNESS: It's not my</p> <p>10 recall. I don't recall them</p> <p>11 discussing this option about disposal</p> <p>12 of birds. My recall is discussion</p> <p>13 about moving molts earlier.</p> <p>14 BY MS. SMITH:</p> <p>15 Q. What did they state about</p> <p>16 moving molts earlier?</p> <p>17 MS. ANDERSON: Object to the</p> <p>18 form of the question.</p> <p>19 THE WITNESS: I don't recall the</p> <p>20 exact verbiage. There were often --</p> <p>21 there were at times discussions about</p> <p>22 moving molts in the way that it could</p> <p>23 shift, it would not change the total</p> <p>24 supply or output of a flock, but you</p> <p>25 could shift the timing of when those</p>	<p style="text-align: right;">Page 52</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SMITH:</p> <p>3 Q. When was the last time you</p> <p>4 spoke with Gene Gregory?</p> <p>5 A. I think it was early December</p> <p>6 of 2012 at a point that I called him. I knew</p> <p>7 he was retiring basically about the same time</p> <p>8 I did and I called to wish him best of life</p> <p>9 to come.</p> <p>10 Q. During your tenure at Michael</p> <p>11 Foods, how often did you speak with Gene</p> <p>12 Gregory?</p> <p>13 A. Possibly twice a year.</p> <p>14 Q. Who is Connie Bish?</p> <p>15 A. Connie Bish was my assistant in</p> <p>16 my Pennsylvania office in the early 2000, I</p> <p>17 would guess it was.</p> <p>18 Q. Did there come a point where</p> <p>19 she was no longer your assistant?</p> <p>20 A. Yes.</p> <p>21 Q. When was that?</p> <p>22 A. I don't recall. Again, it was</p> <p>23 early 2000s.</p> <p>24 Q. Do you know where she went?</p> <p>25 A. Yeah, she went to Atlanta to</p>
<p style="text-align: right;">Page 51</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 eggs were produced to shift maybe away</p> <p>3 from lower production, lower demand</p> <p>4 periods such as the summer.</p> <p>5 BY MS. SMITH:</p> <p>6 Q. Let's move to "Option #2" on</p> <p>7 the next page ending in 609. This option</p> <p>8 states, "It is my company's intention to</p> <p>9 reduce my own December 1, 2004 flock size by</p> <p>10 5% between the dates of January 1 through</p> <p>11 April 30, 2005."</p> <p>12 Do you remember that option</p> <p>13 being discussed by UEP at the Economic</p> <p>14 Summit?</p> <p>15 A. No, I do not.</p> <p>16 Q. Do you remember Michael Foods</p> <p>17 participating in either of those options?</p> <p>18 MS. ANDERSON: Object to the</p> <p>19 form.</p> <p>20 THE WITNESS: Michael Foods, the</p> <p>21 best of my knowledge, has never</p> <p>22 participated in any of these types of</p> <p>23 programs with United Egg Producers.</p> <p>24 And, in fact, that timeline, we would</p> <p>25 have been expanding our supply.</p>	<p style="text-align: right;">Page 53</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 work for the CDC and to work on her Ph.D.</p> <p>3 - - -</p> <p>4 (Exhibit Catherman-5, E-mail</p> <p>5 chain, Bates MFI0117419 &amp; MFI0117420,</p> <p>6 was marked for identification.)</p> <p>7 - - -</p> <p>8 BY MS. SMITH:</p> <p>9 Q. Mr. Catherman, I'm showing you</p> <p>10 an e-mail marked Exhibit Catherman-5, Bates</p> <p>11 stamped MFI0117419 through 420. It's an</p> <p>12 e-mail chain from November 8, 2004, between</p> <p>13 you, Mr. Catherman and Connie Bish, subject</p> <p>14 "Dinner Date."</p> <p>15 A. Okay. Let me read it.</p> <p>16 [Reviewing document.] Okay.</p> <p>17 Q. Mr. Catherman, in this e-mail</p> <p>18 which it starts on the bottom of the chain</p> <p>19 and then moves its way up --</p> <p>20 A. Yes.</p> <p>21 Q. -- it appears that you were</p> <p>22 discussing your attendance at the Egg</p> <p>23 Economic Summit in Atlanta on November 15th.</p> <p>24 Is that correct?</p> <p>25 A. Yes, that's what's reflected</p>

14 (Pages 50 - 53)



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<p style="text-align: right;">Page 54</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 here.</p> <p>3 Q. And then if you move to the</p> <p>4 first page and you move to -- it's not the</p> <p>5 very, very bottom e-mail, but the second from</p> <p>6 the bottom, you stated, "I can't, the shell</p> <p>7 egg guys are having an 'Egg Industry Economic</p> <p>8 Summit' on Tuesday and I can't miss it!!!!</p> <p>9 They are losing money again and they think</p> <p>10 this will help. Kill 8 million layers</p> <p>11 overnight and you can fix it!!!!</p> <p>12 "What do you think the animal</p> <p>13 welfare folks would suggest??? Maybe we just</p> <p>14 need to let some out onto the streets."</p> <p>15 Is that correct?</p> <p>16 A. That's what's cited here, yes.</p> <p>17 Q. Did you believe that the Egg</p> <p>18 Industry Economic Summit and the shell egg</p> <p>19 guys were advocating killing 8 million layers</p> <p>20 overnight and you can fix their losing money?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: No. This is my --</p> <p>24 Connie and I had a constant exchange</p> <p>25 of humor, if you can call it that. In</p>	<p style="text-align: right;">Page 56</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 the dates of January 1 and April 30,</p> <p>3 January 1 through April 30, 2005. Do you</p> <p>4 believe that they were joking when they said</p> <p>5 they wanted you to reduce your flock size?</p> <p>6 MS. ANDERSON: Object to the</p> <p>7 form of the question.</p> <p>8 MR. DAVIS: Object.</p> <p>9 THE WITNESS: I don't see the</p> <p>10 relationship --</p> <p>11 MR. DAVIS: Same objection.</p> <p>12 THE WITNESS: -- to the two</p> <p>13 points at all. My e-mail to her is</p> <p>14 before the Economic Summit. I already</p> <p>15 stated that I did not participate in</p> <p>16 this and was not aware of this option.</p> <p>17 And so there's no correlation between</p> <p>18 the two, from my perspective.</p> <p>19 BY MS. SMITH:</p> <p>20 Q. So you joked that they would</p> <p>21 suggest that they would kill layers and then</p> <p>22 they actually asked you to do it?</p> <p>23 MS. ANDERSON: Objection.</p> <p>24 Foundation. Form.</p> <p>25 THE WITNESS: I already cited</p>
<p style="text-align: right;">Page 55</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 the point that in her responsibilities</p> <p>3 with me, she did our interfacing with</p> <p>4 suppliers if they called and they had</p> <p>5 material issues or something else, and</p> <p>6 she would call them crybabies. So</p> <p>7 this is sort of a takeoff on that</p> <p>8 pleading to our exchanges back and</p> <p>9 forth with poor attempts at humor, but</p> <p>10 still very effective between she and</p> <p>11 I.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. So this is -- you believe that</p> <p>14 you were joking when you discussed that the</p> <p>15 shell egg guys believed that killing 8</p> <p>16 million layers would fix their losing money?</p> <p>17 MS. ANDERSON: Object to the</p> <p>18 form of the question.</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MS. SMITH:</p> <p>21 Q. But a moment ago, in Catherman,</p> <p>22 I believe we were at 4, one option, Option 2,</p> <p>23 which is the last page of the document,</p> <p>24 indicated that the UEP asked their members to</p> <p>25 reduce their flock size by 5 percent between</p>	<p style="text-align: right;">Page 57</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 that I had -- I joked about it, the</p> <p>3 egg number, I don't recall where I got</p> <p>4 that, it could have been one, it could</p> <p>5 have been 300. But, again, I already</p> <p>6 cited that I had no idea what UEP was</p> <p>7 going to talk about at this Economic</p> <p>8 Summit other than my presentation.</p> <p>9 MS. SMITH: Okay, we can take a</p> <p>10 break.</p> <p>11 VIDEOGRAPHER: This ends disc</p> <p>12 number one of the Catherman</p> <p>13 deposition. The time is 10:06:22.</p> <p>14 Off the record.</p> <p>15 - - -</p> <p>16 (A recess was taken.)</p> <p>17 - - -</p> <p>18 VIDEOGRAPHER: On the record</p> <p>19 with disc number two of the testimony</p> <p>20 of Toby Catherman in the matter of</p> <p>21 Processed Egg Products. The date is</p> <p>22 March 18, 2014. The time is 10:22:14.</p> <p>23 BY MS. SMITH:</p> <p>24 Q. Mr. Catherman, I'm going to</p> <p>25 remind you that you're still under oath.</p>

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<p style="text-align: right;">Page 58</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. In 2005, Michael Foods was not</p> <p>4 signed on to the Animal Care Certified</p> <p>5 Program. Correct?</p> <p>6 A. Correct.</p> <p>7 Q. Do you recall in April 2005</p> <p>8 Michael Foods taking any proactive steps to</p> <p>9 convince their customers that they were</p> <p>10 following a set of requirements that were</p> <p>11 scientific and animal welfare friendly?</p> <p>12 MS. ANDERSON: Object to the</p> <p>13 form of the question. Lacks</p> <p>14 foundation.</p> <p>15 THE WITNESS: I don't really</p> <p>16 even understand the question, so could</p> <p>17 you elaborate or restate it?</p> <p>18 BY MS. SMITH:</p> <p>19 Q. Sure. In -- before Michael</p> <p>20 Foods was a member of the Animal Care</p> <p>21 Certified Program, did Michael Foods take any</p> <p>22 steps to convince their customers that they</p> <p>23 were animal welfare certified, not on a</p> <p>24 program, but just animal welfare, I'm going</p> <p>25 to use the term "friendly"?</p>	<p style="text-align: right;">Page 60</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 program differ from the Animal Welfare</p> <p>3 Program of the UEP?</p> <p>4 MS. ANDERSON: Object to the</p> <p>5 form of the question.</p> <p>6 THE WITNESS: The most</p> <p>7 significant was the square inch</p> <p>8 capacity level. UEP's was on a</p> <p>9 graduated scale at that point yet to</p> <p>10 67, I think if you're still talking</p> <p>11 2005. This program, if my memory is</p> <p>12 right, was at 72, it might have been</p> <p>13 75 square. One or the other.</p> <p>14 BY MS. SMITH:</p> <p>15 Q. So Michael Foods had larger</p> <p>16 cage space?</p> <p>17 MS. ANDERSON: Object to the</p> <p>18 form of the question.</p> <p>19 THE WITNESS: In that one</p> <p>20 facility, in one facility for one</p> <p>21 customer, yes.</p> <p>22 - - -</p> <p>23 (Exhibit Catherman-6, Michael</p> <p>24 Foods Animal Welfare document, Bates</p> <p>25 MFI0322587 &amp; MFI0322588, was marked</p>
<p style="text-align: right;">Page 59</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Object to the</p> <p>3 form of the question.</p> <p>4 Dana, can I clarify, when you're</p> <p>5 talking about the Animal Welfare</p> <p>6 Certified Program, are you talking</p> <p>7 about the UEP Certified Program?</p> <p>8 MS. SMITH: Correct.</p> <p>9 THE WITNESS: At that time,</p> <p>10 Michael Foods was not part of the UEP</p> <p>11 Certified Program. Obviously you</p> <p>12 stated that. But prior to that,</p> <p>13 already back in 2000, 2001 I think it</p> <p>14 was, we had our own special</p> <p>15 proprietary program that we used for</p> <p>16 one particular customer. And a lot of</p> <p>17 those standards that were used in that</p> <p>18 program then were adopted throughout</p> <p>19 the Michael Foods company owned</p> <p>20 facilities.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. And what was that proprietary</p> <p>23 program? Who was that for?</p> <p>24 A. Burger King.</p> <p>25 Q. And how did that proprietary</p>	<p style="text-align: right;">Page 61</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MS. SMITH:</p> <p>5 Q. I'm marking a document</p> <p>6 Catherman-6, Bates labeled MFI0322587 through</p> <p>7 88. It has the Michael Foods' logo on it and</p> <p>8 it says, "Animal Welfare" at the top.</p> <p>9 A. Okay.</p> <p>10 Q. First, did you, as an employee</p> <p>11 of Michael Foods, not in your consulting</p> <p>12 position, but during your tenure as an</p> <p>13 employee, have any responsibility for the</p> <p>14 marketing and sales of Michael Foods</p> <p>15 products?</p> <p>16 A. Yes, there was a period in the</p> <p>17 early 2000s, I think it was 2000 to 2002, to</p> <p>18 2003, of which I was also vice president of</p> <p>19 industrial sales with a primary focus on the</p> <p>20 East Coast, reporting to Terry Baker at the</p> <p>21 time.</p> <p>22 Q. And what was your role in</p> <p>23 industrial sales?</p> <p>24 A. It's really primarily a</p> <p>25 supervisory in a point that I did not really</p>

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<p style="text-align: right;">Page 62</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 make direct sales calls, but did not say I</p> <p>3 would not call on a customer with one of the</p> <p>4 sales staff, but my role really was to help</p> <p>5 reorganize the Papetti Industrial Sales</p> <p>6 Program on the East Coast into the existing</p> <p>7 program that Michael Foods already had, and</p> <p>8 to supervise or -- yeah, supervise that sales</p> <p>9 group that was involved in that activity and</p> <p>10 also the customer service group that was</p> <p>11 involved in that activity.</p> <p>12 Q. So you were reorganizing</p> <p>13 Papetti's Industrial Sales Program. What are</p> <p>14 industrial sales?</p> <p>15 A. Industrial sales is what we</p> <p>16 called it at that time, is direct sales to</p> <p>17 primarily food manufacturers, it could be a</p> <p>18 bakery, it could be a candy manufacturer,</p> <p>19 that type of end user, nonfood services,</p> <p>20 non-retail would basically put everything</p> <p>21 else into that bucket.</p> <p>22 Q. I'm sorry, you said that was</p> <p>23 2000 to 2002 approximately?</p> <p>24 A. Yeah, I believe it was right in</p> <p>25 that time frame.</p>	<p style="text-align: right;">Page 64</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 were sort of an open catalog and that</p> <p>3 we had uncertified product,</p> <p>4 conventional product as one would say.</p> <p>5 We would also have our proprietary</p> <p>6 program or create a proprietary</p> <p>7 program for somebody or that we could</p> <p>8 develop different standards. Did the</p> <p>9 exact same thing on food safety.</p> <p>10 BY MS. SMITH:</p> <p>11 Q. Do you know who wrote this</p> <p>12 document?</p> <p>13 A. I do not recall.</p> <p>14 Q. Do you know if you wrote this</p> <p>15 document?</p> <p>16 A. I would doubt it. But I do</p> <p>17 believe that I was probably -- did have an</p> <p>18 edit of it.</p> <p>19 Q. This document states, "We</p> <p>20 believe issues exist surrounding the audit</p> <p>21 and compliance process and we have</p> <p>22 reservations with the use of the 'Animal</p> <p>23 Care' logo." It's the second bold paragraph</p> <p>24 on page 1. Is that correct?</p> <p>25 A. Yes, that's what's cited.</p>
<p style="text-align: right;">Page 63</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. So, Mr. Catherman, have you</p> <p>3 ever seen the document Bates stamped</p> <p>4 Catherman -- not Bates stamped, excuse me,</p> <p>5 marked Catherman-6?</p> <p>6 A. I believe I have.</p> <p>7 Q. And how was this document</p> <p>8 utilized by Michael Foods?</p> <p>9 MS. ANDERSON: Object to the</p> <p>10 form of the question. Foundation.</p> <p>11 THE WITNESS: Based on Michael</p> <p>12 Foods' sales program and our approach</p> <p>13 to the market whereas we're satisfying</p> <p>14 what the marketplace really requires,</p> <p>15 we will get various inquiries from</p> <p>16 customers at all kinds of levels</p> <p>17 about, in this case, different welfare</p> <p>18 programs and egg supplies that could</p> <p>19 meet certain welfare programs that the</p> <p>20 customer thought that they wanted to</p> <p>21 review. To assist in that, we created</p> <p>22 more or less a talking point, white</p> <p>23 paper if you want to call it this.</p> <p>24 Sort of highlight the current position</p> <p>25 of Michael Foods at that time, that we</p>	<p style="text-align: right;">Page 65</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you have an understanding of</p> <p>3 what those issues were that surrounded the</p> <p>4 audit and compliance process and why Michael</p> <p>5 Foods had reservations for the use of the</p> <p>6 animal care logo?</p> <p>7 MS. ANDERSON: Objection.</p> <p>8 Compound.</p> <p>9 THE WITNESS: It's here a</p> <p>10 reference to the UEP Certified</p> <p>11 Program. And, yes, our problem with</p> <p>12 the audit and compliance process was</p> <p>13 that the UEP program was established,</p> <p>14 an audit only went through technically</p> <p>15 the packing of the egg, in most cases</p> <p>16 really only went through what occurred</p> <p>17 in the layer facility itself, not in</p> <p>18 really what happened in the cartoning</p> <p>19 area or the egg processing area, and</p> <p>20 had no guidance, no audit procedures</p> <p>21 and no guidance from UEP on what would</p> <p>22 happen to that egg once it left a</p> <p>23 grading machine or a breaking machine.</p> <p>24 As part of our internal audit</p> <p>25 processes, we were always on the</p>

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<p style="text-align: right;">Page 66</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 forefront, unlike most companies, at a</p> <p>3 point that we had a full audit program</p> <p>4 to make sure that we were meeting</p> <p>5 exactly any labeling or</p> <p>6 representations we were doing with any</p> <p>7 of our customers to make sure that we</p> <p>8 established no commingling, quality</p> <p>9 standards, all the other factors. Our</p> <p>10 concern with the UEP program was that,</p> <p>11 again, they only audited and monitored</p> <p>12 until the egg was actually put onto a</p> <p>13 grading machine. Once those eggs left</p> <p>14 that facility, whether they were under</p> <p>15 grades going to a competitor of mine,</p> <p>16 and they would potentially label that</p> <p>17 as UEP certified liquid product, there</p> <p>18 was no audit process of that. UEP</p> <p>19 never established any guidelines on</p> <p>20 how to monitor that. There was no</p> <p>21 establishment of UEP guidelines on</p> <p>22 representation in the marketplace of</p> <p>23 products. So we obviously had huge</p> <p>24 challenges on that before we put our</p> <p>25 name on the product or our name next</p>	<p style="text-align: right;">Page 68</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 liquid product, there was no audit process of</p> <p>3 that. UEP never established any guidelines</p> <p>4 on how to monitor that."</p> <p>5 Did UEP ever establish</p> <p>6 guidelines on how to monitor that?</p> <p>7 A. No.</p> <p>8 MS. ANDERSON: Object to the</p> <p>9 form of the question.</p> <p>10 BY MS. SMITH:</p> <p>11 Q. Did UEP ever establish</p> <p>12 guidelines on representation in the</p> <p>13 marketplace of products?</p> <p>14 MS. ANDERSON: Object to the</p> <p>15 form of the question.</p> <p>16 THE WITNESS: I don't really</p> <p>17 know.</p> <p>18 BY MS. SMITH:</p> <p>19 Q. During your tenure at Michael</p> <p>20 Foods, did UEP ever establish guidelines on</p> <p>21 the representation in the marketplace of</p> <p>22 products?</p> <p>23 MS. ANDERSON: Object to the</p> <p>24 form of the question. Asked and</p> <p>25 answered. You just asked him that</p>
<p style="text-align: right;">Page 67</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 to a UEP logo on how that</p> <p>3 representation could be in the</p> <p>4 marketplace.</p> <p>5 BY MS. SMITH:</p> <p>6 Q. You stated UEP never</p> <p>7 established any guidelines on how to monitor</p> <p>8 that, and what you're referring to is UEP</p> <p>9 certified liquid product. Did UEP ever</p> <p>10 change their guidelines?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form. Foundation. I think you're</p> <p>13 misstating his testimony, but you can</p> <p>14 answer, Mr. Catherman.</p> <p>15 THE WITNESS: I, again, don't</p> <p>16 recall exactly what I said.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. Why don't we read it back.</p> <p>19 I'll read. "Our concern with the UEP program</p> <p>20 was that, again, they only audited and</p> <p>21 monitored until the egg was actually put onto</p> <p>22 a grading machine. Once those eggs left that</p> <p>23 facility, whether they were under grades</p> <p>24 going to a competitor of mine, and they would</p> <p>25 potentially label that as UEP certified</p>	<p style="text-align: right;">Page 69</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 question.</p> <p>3 THE WITNESS: I don't recall. I</p> <p>4 don't believe they did.</p> <p>5 BY MS. SMITH:</p> <p>6 Q. Let's go back to the document</p> <p>7 and the third full paragraph. "Michael Foods</p> <p>8 has not signed up for certification under the</p> <p>9 new UEP guidelines. Since the program</p> <p>10 requires 100% compliance of all company</p> <p>11 production facilities, we decided it would be</p> <p>12 unfair to pass the increased costs of the</p> <p>13 program to customers who do not require</p> <p>14 compliance with the new UEP guidelines."</p> <p>15 Why was it unfair that the</p> <p>16 program required 100 percent compliance of</p> <p>17 all company production facilities?</p> <p>18 MS. ANDERSON: Objection.</p> <p>19 Foundation. You're misstating the</p> <p>20 document. Mr. Catherman, if you</p> <p>21 understand what she's asking you, you</p> <p>22 can answer.</p> <p>23 THE WITNESS: Could you ask the</p> <p>24 question again?</p> <p>25 BY MS. SMITH:</p>

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<p style="text-align: right;">Page 70</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Let's go back. The UEP program</p> <p>3 required 100 percent compliance of all</p> <p>4 company production facilities. Correct?</p> <p>5 A. Yes.</p> <p>6 Q. And what does that -- what was</p> <p>7 that 100 percent compliance? What were the</p> <p>8 requirements of 100 percent compliance?</p> <p>9 MS. ANDERSON: Object to the</p> <p>10 form of the question. Vague and</p> <p>11 ambiguous.</p> <p>12 THE WITNESS: The standard, as</p> <p>13 my understanding, is that 100 percent</p> <p>14 of your layer ownership must meet and</p> <p>15 pass annual audits of the UEP</p> <p>16 standard. In that standard meant that</p> <p>17 100 percent of your layers had to pass</p> <p>18 that audit. As part of that standard,</p> <p>19 there are various criteria in there</p> <p>20 including density.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Back to the document, in that</p> <p>23 same paragraph, the document states,</p> <p>24 "Instead, we have chosen to honor individual</p> <p>25 customer requests to supply eggs that meet</p>	<p style="text-align: right;">Page 72</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 However, the implementation of the new UEP</p> <p>3 guidelines does bring additional costs, which</p> <p>4 must be reflected, in the final price of</p> <p>5 eggs."</p> <p>6 Do you understand that Michael</p> <p>7 Foods' eggs were identical to those produced</p> <p>8 under the current guidelines in 2005?</p> <p>9 MS. ANDERSON: Object to the</p> <p>10 form of the question. Lacks</p> <p>11 foundation.</p> <p>12 THE WITNESS: That's not the</p> <p>13 point here. The point was that eggs</p> <p>14 produced under different animal</p> <p>15 husbandry, densities are nutritionally</p> <p>16 equivalent.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. Where does it say nutritionally</p> <p>19 equivalent?</p> <p>20 A. That's the point of this.</p> <p>21 Means you give me an egg that is cage free,</p> <p>22 organic, conventional caging, the proprietary</p> <p>23 system under -- we had for UEP, nutritionally</p> <p>24 you can't tell the difference of any of them,</p> <p>25 because the difference is in animal welfare</p>
<p style="text-align: right;">Page 71</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 the new UEP guidelines."</p> <p>3 Is it your understanding that</p> <p>4 Michael Foods honored individual requests for</p> <p>5 meeting the UEP guidelines by its specific</p> <p>6 customers?</p> <p>7 MS. ANDERSON: Object to the</p> <p>8 form.</p> <p>9 THE WITNESS: I believe that's</p> <p>10 correct.</p> <p>11 BY MS. SMITH:</p> <p>12 Q. And then it states, "We</p> <p>13 currently supply eggs that meet or exceed the</p> <p>14 new UEP guidelines to several customers."</p> <p>15 Do you know who those customers</p> <p>16 were?</p> <p>17 A. I don't know all of them. One</p> <p>18 in particular we obviously already cited was</p> <p>19 Burger King.</p> <p>20 Q. The second page of the</p> <p>21 document, the second to last full paragraph,</p> <p>22 it states, "We would like to stress to our</p> <p>23 customers that the eggs are identical whether</p> <p>24 they are produced under the current</p> <p>25 guidelines or under the new UEP guidelines.</p>	<p style="text-align: right;">Page 73</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 which has to do with air conditions, density</p> <p>3 of housing, feeding programs. So those are</p> <p>4 -- if they're given the same feeding</p> <p>5 programs, they would all be equivalent. The</p> <p>6 point here being is that once you went to</p> <p>7 UEP, you changed that equivalence by a cost</p> <p>8 factor based on the husbandry standard you're</p> <p>9 now asking for primarily around the density</p> <p>10 which would increase cost structures because</p> <p>11 of the density of which you're housing that</p> <p>12 bird.</p> <p>13 Q. Who is Rich Products?</p> <p>14 A. Rich Products is a food</p> <p>15 manufacturer. They do premixes and whip</p> <p>16 creams and that type of stuff, based in</p> <p>17 Buffalo, New York.</p> <p>18 Q. And they were a client of</p> <p>19 Michael Foods?</p> <p>20 A. Customer, yes.</p> <p>21 Q. Customer.</p> <p>22 - - -</p> <p>23 (Exhibit Catherman-7, 12/16/08</p> <p>24 E-mail with attachment, Bates</p> <p>25 MFI0068418 - MFI0068446, was marked</p>

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<p style="text-align: right;">Page 74</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MS. SMITH:</p> <p>5 Q. Mr. Catherman, I'm showing you</p> <p>6 a document Exhibit Catherman-7. It's Bates</p> <p>7 stamp MFI0068418 through 446. It's an e-mail</p> <p>8 and attachment from you to Jason Taylor with</p> <p>9 a copy to Terry Baker and Bruce Waddell. The</p> <p>10 subject, "08-12-18 Rich Products - Egg</p> <p>11 Industry and Markets."</p> <p>12 Mr. Catherman, you can review</p> <p>13 the entire document.</p> <p>14 A. Go ahead.</p> <p>15 Q. But I'm mostly going to direct</p> <p>16 your attention --</p> <p>17 A. Go ahead.</p> <p>18 Q. -- to the documents ending in</p> <p>19 439 and 440.</p> <p>20 A. [Reviewing document.]</p> <p>21 Q. Mr. Catherman, have you had a</p> <p>22 chance to review the document?</p> <p>23 A. Partially, yes.</p> <p>24 MS. ANDERSON: The pages you</p> <p>25 directed him to or the entire</p>	<p style="text-align: right;">Page 76</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Now, would Mr. Taylor be the</p> <p>3 person presenting this presentation to Rich</p> <p>4 Products?</p> <p>5 A. I was -- I would assume. I</p> <p>6 don't recall, but I believe that would be the</p> <p>7 case.</p> <p>8 Q. Now would you assist in that</p> <p>9 presentation beyond preparing the slides?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question. Lacks</p> <p>12 foundation.</p> <p>13 THE WITNESS: No.</p> <p>14 BY MS. SMITH:</p> <p>15 Q. So back to Bates 439, the</p> <p>16 document states, "What's Causing The</p> <p>17 Pressure...." - Low Layer -- Lower Layer</p> <p>18 Inventories: • 279.6 million today,</p> <p>19 January 2009 expected to exceed prior year</p> <p>20 monthly level - first time since</p> <p>21 December 2006.</p> <p>22 It then goes on, UEP Certified</p> <p>23 Guidelines have removed approximately 39</p> <p>24 million cage spaces, 56 million by 2007 --</p> <p>25 '10. Excuse me.</p>
<p style="text-align: right;">Page 75</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 document?</p> <p>3 BY MS. SMITH:</p> <p>4 Q. The pages I directed you to,</p> <p>5 but do you want to go back and review the</p> <p>6 entire document?</p> <p>7 A. I will if I need to based on</p> <p>8 your questioning, but I'm fine with these</p> <p>9 two pages.</p> <p>10 Q. Directing your attention to the</p> <p>11 page Bates stamp MFI0068439, the slide is</p> <p>12 "Egg Markets." First, did you create this</p> <p>13 presentation?</p> <p>14 A. I believe I did.</p> <p>15 Q. And just for clarity, who is</p> <p>16 Jason Taylor?</p> <p>17 A. He was then and is still vice</p> <p>18 president of sales for the -- what we call</p> <p>19 the ingredient division today.</p> <p>20 Q. We discussed Terry Baker</p> <p>21 before, but who is Bruce Waddell?</p> <p>22 A. At this time he was a</p> <p>23 salesperson, I think, and director of</p> <p>24 customer development or something like that.</p> <p>25 Reporting to Jason Taylor.</p>	<p style="text-align: right;">Page 77</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 "- Record Grain prices and</p> <p>3 higher pullet replacement costs.</p> <p>4 "- Record Low Dried product</p> <p>5 inventories in 2007 have now reached 5 year</p> <p>6 average levels."</p> <p>7 Is that correct?</p> <p>8 A. That's what's cited here, yes.</p> <p>9 Q. What are you referring to by</p> <p>10 "What's Causing The Pressure...."?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form.</p> <p>13 THE WITNESS: This is all part</p> <p>14 of an industry trend or industry</p> <p>15 occurrence update for that customer.</p> <p>16 So that point would probably be around</p> <p>17 what is affecting price points.</p> <p>18 BY MS. SMITH:</p> <p>19 Q. And you told your customer that</p> <p>20 UEP Certified Guidelines have removed</p> <p>21 approximately 39 million cage spaces, 56</p> <p>22 million by 2010, and that was affecting the</p> <p>23 price point?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question. Lacks</p>

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<p style="text-align: right;">Page 78</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 foundation.</p> <p>3 THE WITNESS: I didn't tell the</p> <p>4 customer anything. I presented a</p> <p>5 document that I cited that UEP</p> <p>6 guidelines at that point, based on my</p> <p>7 projections, had removed approximately</p> <p>8 39 cage spaces. It did not reference</p> <p>9 and it would have been part of the</p> <p>10 conversation. That is a market factor</p> <p>11 but not a sole factor, because just</p> <p>12 doing during that period of time</p> <p>13 Michael Foods itself would have added</p> <p>14 quite a few million birds during the</p> <p>15 implementation of UEP and would have</p> <p>16 continued to. So that's an abstract</p> <p>17 number of what cage changes would have</p> <p>18 been under a theoretical calculation,</p> <p>19 which I don't remember what the basis</p> <p>20 of that was at that time.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. But you wrote that a factor</p> <p>23 that was causing pressure on the egg market</p> <p>24 and increasing price was the UEP Certified</p> <p>25 Guidelines?</p>	<p style="text-align: right;">Page 80</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 reporter read back his testimony?</p> <p>3 MS. ANDERSON: Which part would</p> <p>4 you like?</p> <p>5 MS. SMITH: 71-06 to 71-10.</p> <p>6 - - -</p> <p>7 (The court reporter read the</p> <p>8 pertinent part of the record.)</p> <p>9 - - -</p> <p>10 MS. ANDERSON: You're asking him</p> <p>11 to confirm his prior testimony?</p> <p>12 MS. SMITH: I'm asking him that</p> <p>13 this portion of the presentation was</p> <p>14 what was affecting price points.</p> <p>15 BY MS. SMITH:</p> <p>16 Q. Is that correct?</p> <p>17 A. The presentation has an agenda,</p> <p>18 and part of that agenda says current events</p> <p>19 and activities influence Urner Barry markets.</p> <p>20 So this was a section under that point that</p> <p>21 was going to be part of the entire agenda.</p> <p>22 Q. And so under the heading,</p> <p>23 "Current Events and Activities influencing</p> <p>24 the Urner Barry Markets," you wrote one of</p> <p>25 the points affecting Urner Barry markets is</p>
<p style="text-align: right;">Page 79</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Object to the</p> <p>3 form of the question. That's not what</p> <p>4 he wrote.</p> <p>5 THE WITNESS: I wrote exactly</p> <p>6 what's there, which is UEP guidelines</p> <p>7 have removed approximately 39 million</p> <p>8 cage spaces --</p> <p>9 BY MS. SMITH:</p> <p>10 Q. Right.</p> <p>11 A. -- as a market factor.</p> <p>12 Q. But a moment ago you testified</p> <p>13 that the point of this presentation is what</p> <p>14 is affecting price points.</p> <p>15 MS. ANDERSON: Object to the</p> <p>16 form of the question. He has not</p> <p>17 testified as to the point of this</p> <p>18 presentation.</p> <p>19 BY MS. SMITH:</p> <p>20 Q. So I'm going to read back.</p> <p>21 This is all part --</p> <p>22 MS. ANDERSON: Are you rereading</p> <p>23 his testimony, Counsel, because we</p> <p>24 have a court reporter to do that.</p> <p>25 MS. SMITH: Okay. Can the court</p>	<p style="text-align: right;">Page 81</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 UEP Certified Guidelines.</p> <p>3 MS. ANDERSON: Objection. Where</p> <p>4 are you quoting in the document,</p> <p>5 Counsel? The two slides you directed</p> <p>6 him to say, "Egg Markets."</p> <p>7 MS. SMITH: Mr. Catherman</p> <p>8 referred back to page MFI0068420 which</p> <p>9 is an agenda. And he indicated that</p> <p>10 this section would fall under "Current</p> <p>11 Events and Activities influencing the</p> <p>12 Urner Barry Markets."</p> <p>13 MS. ANDERSON: What is "this</p> <p>14 section," Counsel?</p> <p>15 MS. SMITH: This slide.</p> <p>16 MS. ANDERSON: What's "this</p> <p>17 slide"?</p> <p>18 MS. SMITH: Egg markets.</p> <p>19 MS. ANDERSON: What's the Bates</p> <p>20 number?</p> <p>21 MS. SMITH: MFI0068439.</p> <p>22 MS. ANDERSON: So you're asking</p> <p>23 Mr. Catherman to confirm that</p> <p>24 MFI0068439 falls under the heading</p> <p>25 "Current Events and Activities</p>

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<p style="text-align: right;">Page 82</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 influencing the Urner Barry Markets"</p> <p>3 on MFI0068420?</p> <p>4 MS. SMITH: No. Mr. Catherman</p> <p>5 said that that would be the heading</p> <p>6 that this slide would fall under.</p> <p>7 MS. ANDERSON: So you're asking</p> <p>8 him to confirm that this slide, being</p> <p>9 slide 21, falls under that heading? I</p> <p>10 just want to understand the question.</p> <p>11 MS. SMITH: Right. So he</p> <p>12 confirmed that this slide falls under</p> <p>13 that heading.</p> <p>14 MS. ANDERSON: Are you asking</p> <p>15 him or not?</p> <p>16 BY MS. SMITH:</p> <p>17 Q. Did this slide fall under that</p> <p>18 heading?</p> <p>19 MS. ANDERSON: And by "this</p> <p>20 slide," you mean slide 21. Correct?</p> <p>21 MS. SMITH: Correct.</p> <p>22 THE WITNESS: Yes.</p> <p>23 MS. ANDERSON: And by "that</p> <p>24 heading," you mean current events and</p> <p>25 activities influencing the Urner Barry</p>	<p style="text-align: right;">Page 84</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 the question, Mr. Catherman?</p> <p>3 THE WITNESS: Yes, she's</p> <p>4 referring did I -- is the bullet point</p> <p>5 citing that UEP guidelines removed</p> <p>6 approximately 39 million cage spaces.</p> <p>7 Yes, I wrote that.</p> <p>8 BY MS. SMITH:</p> <p>9 Q. Did you write that the UEP</p> <p>10 guidelines have removed approximately 39</p> <p>11 million cage spaces, 56 million by 2010 as a</p> <p>12 point of what's causing the pressure?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question.</p> <p>15 THE WITNESS: I already said</p> <p>16 that I did write it and it was part of</p> <p>17 what should have been a discussion</p> <p>18 around market factors. The discussion</p> <p>19 was to update our customer as their</p> <p>20 request, which every customer requests</p> <p>21 when you go in, what's affecting Urner</p> <p>22 Barry.</p> <p>23 BY MS. SMITH:</p> <p>24 Q. Did there ever come a time when</p> <p>25 you believed that Michael Foods would cancel</p>
<p style="text-align: right;">Page 83</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 markets?</p> <p>3 MS. SMITH: Correct.</p> <p>4 MS. ANDERSON: Do you understand</p> <p>5 the question, Mr. Catherman?</p> <p>6 THE WITNESS: Yes. It would be</p> <p>7 part of the discussion around that</p> <p>8 agenda point.</p> <p>9 BY MS. SMITH:</p> <p>10 Q. And part of that discussion</p> <p>11 was -- and part of the discussion as</p> <p>12 indicated on the agenda of the current events</p> <p>13 and activities influencing the Urner Barry</p> <p>14 markets was the UEP Certified Guidelines?</p> <p>15 A. It is one of many points that I</p> <p>16 put on this document that's underneath that.</p> <p>17 How it was presented and discussed, I was not</p> <p>18 there.</p> <p>19 Q. But you put it there because</p> <p>20 you believed it was affecting the Urner Barry</p> <p>21 market?</p> <p>22 MS. ANDERSON: Object to the</p> <p>23 form of the question. Vague.</p> <p>24 Ambiguous as to "it," "there," "it"</p> <p>25 and "affecting." Do you understand</p>	<p style="text-align: right;">Page 85</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 their membership with UEP?</p> <p>3 A. I don't really recall that.</p> <p>4 Q. Did Michael Foods ever consider</p> <p>5 suing UEP?</p> <p>6 A. Not that I recall.</p> <p>7 - - -</p> <p>8 (Exhibit Catherman-8, E-mail</p> <p>9 chain, Bates MFI0006564, was marked</p> <p>10 for identification.)</p> <p>11 - - -</p> <p>12 BY MS. SMITH:</p> <p>13 Q. I've handed you what's been</p> <p>14 marked Catherman-8, Bates stamped MFI0006564.</p> <p>15 It's a one-page e-mail chain actually. The</p> <p>16 first chain is from Gene Gregory to you, Toby</p> <p>17 Catherman, and with a cc to Roger Deffner and</p> <p>18 the second in the chain is the forward of</p> <p>19 that e-mail from you to Terry Baker from</p> <p>20 March 2005.</p> <p>21 A. Yes.</p> <p>22 Q. Have you had a chance to review</p> <p>23 the document?</p> <p>24 A. Yes.</p> <p>25 Q. Does this refresh your</p>

22 (Pages 82 - 85)



## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 86</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 recollection as to whether Michael Foods ever</p> <p>3 considered canceling its membership with</p> <p>4 Michael -- with UEP?</p> <p>5 MR. BARNES: Objection. That's</p> <p>6 not the question you asked earlier.</p> <p>7 You asked him if he -- if they ever</p> <p>8 considered suing. Now you're changing</p> <p>9 it.</p> <p>10 MS. SMITH: I also asked if they</p> <p>11 considered cancelling their membership.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. Did Michael Foods ever consider</p> <p>14 cancelling the membership?</p> <p>15 A. I don't recall.</p> <p>16 Q. Did Michael Foods ever consider</p> <p>17 suing UEP?</p> <p>18 MS. ANDERSON: Objection. Asked</p> <p>19 and answered.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Do you recall meeting with the</p> <p>23 UEP's Animal Welfare Committee in March 2005?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question. Lacks</p>	<p style="text-align: right;">Page 88</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 as I would have any documents coming</p> <p>3 from UEP since he was on the UEP</p> <p>4 board.</p> <p>5 BY MS. SMITH:</p> <p>6 Q. And you have no recollection of</p> <p>7 why -- strike that.</p> <p>8 Do you know why Mr. Gregory</p> <p>9 would suggest that you were considering --</p> <p>10 you being Michael Foods, was considering</p> <p>11 suing UEP?</p> <p>12 MS. ANDERSON: Object to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: I think I answered</p> <p>15 it differently before, but I don't</p> <p>16 recall this subject at all.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. What is United Egg Association?</p> <p>19 A. It's a trade association</p> <p>20 representing egg processors.</p> <p>21 Q. Was Michael Foods a member of</p> <p>22 United Egg Association?</p> <p>23 A. Yes.</p> <p>24 Q. If I recall it UEA, do we have</p> <p>25 an understanding?</p>
<p style="text-align: right;">Page 87</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 foundation.</p> <p>3 THE WITNESS: I have no idea.</p> <p>4 BY MS. SMITH:</p> <p>5 Q. Did you ever -- Mr. Gregory</p> <p>6 wrote to you, "The offer for you to meet with</p> <p>7 UEP's Animal welfare committee still stands."</p> <p>8 Did you ever take him up on</p> <p>9 that offer?</p> <p>10 A. I don't know in particular</p> <p>11 reference to this letter because I don't</p> <p>12 remember this letter. There were multiple</p> <p>13 occasions where I attended Animal Welfare</p> <p>14 Committee meetings. I don't know of any</p> <p>15 occasion where they had a meeting to meet</p> <p>16 with me.</p> <p>17 Q. You forwarded this e-mail to</p> <p>18 Mr. Baker on March 22, 2005, with the subject</p> <p>19 "Let's Meet." That was the original subject.</p> <p>20 Did you discuss this e-mail with Mr. Baker?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question. He just told</p> <p>23 you he doesn't remember the e-mail.</p> <p>24 THE WITNESS: I don't remember</p> <p>25 the e-mail, so I did forward it to him</p>	<p style="text-align: right;">Page 89</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. That's fine. Yes.</p> <p>3 Q. Who are members of the UEA?</p> <p>4 A. Only egg processors. It can be</p> <p>5 companies that break product and/or companies</p> <p>6 that only process egg product, but they have</p> <p>7 to be either a breaker or a processor of</p> <p>8 products.</p> <p>9 Q. Were you on the board of the</p> <p>10 UEA?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form of the question as to time.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. During the time period 2000</p> <p>15 through 2008, were you on the board of UEA?</p> <p>16 A. At various points of that, yes.</p> <p>17 Q. So at some points you were not</p> <p>18 on the board?</p> <p>19 A. I'm not exactly sure throughout</p> <p>20 that entire thing. I believe I was, but I</p> <p>21 wouldn't be exactly sure. I know I</p> <p>22 definitely was in 2003 through '08.</p> <p>23 Q. Were you on any committees of</p> <p>24 the UEA?</p> <p>25 A. UEA basically did not really</p>

23 (Pages 86 - 89)



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<p style="text-align: right;">Page 90</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 have that many functioning committees. So I</p> <p>3 would say no. We had ad hoc committees that</p> <p>4 the chairman would ask to work on certain</p> <p>5 products, but there were no really standing</p> <p>6 committees.</p> <p>7 Q. You mentioned a chairman. Who</p> <p>8 is the chairman of the UEA?</p> <p>9 MS. ANDERSON: Object to the</p> <p>10 form of the question. Vague and</p> <p>11 ambiguous as to time.</p> <p>12 THE WITNESS: When?</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Between 2003 and 2008.</p> <p>15 A. I was chairman, I think, from</p> <p>16 2004 through 2006. After myself, I believe</p> <p>17 it was Dan Meagher representing Moark. I</p> <p>18 think after he and probably in 2008, I think</p> <p>19 it -- I'm not even sure after that. Before</p> <p>20 I, I think it was Elliot Gibber from Deb-El</p> <p>21 Egg.</p> <p>22 Q. As a result of your membership</p> <p>23 in the UEA, were you placed on any UEP</p> <p>24 committees?</p> <p>25 MS. ANDERSON: Object to the</p>	<p style="text-align: right;">Page 92</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you have any understanding</p> <p>3 of what it is?</p> <p>4 A. It may be the name that UEP</p> <p>5 used for this group. I don't recall.</p> <p>6 Q. I'm going to show you another</p> <p>7 document.</p> <p>8 - - -</p> <p>9 (Exhibit Catherman-9, 5/24/04</p> <p>10 E-mail, Bates MFI0330846, was marked</p> <p>11 for identification.)</p> <p>12 - - -</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Mr. Catherman, I've shown you a</p> <p>15 document marked Catherman-9, Bates stamped</p> <p>16 MFI0330846, it's an e-mail from you to Gene</p> <p>17 Gregory and Dan Meagher with a cc to Al Pope</p> <p>18 and Ken Klippen from Monday, May 24, 2004.</p> <p>19 The subject is "UEP Sub-Committee on Egg</p> <p>20 Products Price Discovery."</p> <p>21 A. I see it.</p> <p>22 Q. The first statement you made is</p> <p>23 "I believe it is important that we are</p> <p>24 consistent what we call our new sub-committee."</p> <p>25 Were you a member of the UEP</p>
<p style="text-align: right;">Page 91</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 form. Foundation. Forgive me, Dana.</p> <p>3 Strike my objection. I don't think</p> <p>4 you asked him that.</p> <p>5 THE WITNESS: I believe that it</p> <p>6 wasn't a formal committee, there was a</p> <p>7 group put together under UEP to</p> <p>8 investigate whether or not we could</p> <p>9 look at Chicago Board of Trade</p> <p>10 potentially creating an index as a</p> <p>11 market index for liquid products.</p> <p>12 Members of that group had to be UEP</p> <p>13 members and even though they were,</p> <p>14 quote, sitting or discussing things</p> <p>15 that were of interest also to UEA.</p> <p>16 BY MS. SMITH:</p> <p>17 Q. Did this committee have a name?</p> <p>18 MS. ANDERSON: Object to the</p> <p>19 form of the question.</p> <p>20 THE WITNESS: I don't recall.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Do you know what the UEP</p> <p>23 Sub-Committee on Egg Products Price Discovery</p> <p>24 is?</p> <p>25 A. Not exactly.</p>	<p style="text-align: right;">Page 93</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Sub-Committee on Egg Products Price</p> <p>3 Discovery?</p> <p>4 MS. ANDERSON: Object to the</p> <p>5 form of the question.</p> <p>6 THE WITNESS: My statement was</p> <p>7 earlier that we formed a small group</p> <p>8 to investigate this. I, in fact,</p> <p>9 didn't recall that we called it a</p> <p>10 subcommittee.</p> <p>11 BY MS. SMITH:</p> <p>12 Q. You further stated, "I just</p> <p>13 received my room confirmation from Linda..."</p> <p>14 Who is Linda?</p> <p>15 A. I don't remember Linda's last</p> <p>16 name. She's a staff person at UEP. Redner</p> <p>17 or something like that. I can't remember.</p> <p>18 Q. And the meeting is referred --</p> <p>19 and you further stated, "...and the meeting</p> <p>20 is referred to as 'UEA'. We all know this is</p> <p>21 an error, but I believe we need to be sure</p> <p>22 'ALL STAFF' inside UEP and our committee</p> <p>23 members' offices use a reference to 'UEP'."</p> <p>24 Why is that?</p> <p>25 MS. ANDERSON: Object to the</p>

24 (Pages 90 - 93)

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<p style="text-align: right;">Page 94</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 form of the question.</p> <p>3 THE WITNESS: The UEA is a trade</p> <p>4 association so it cannot at any time</p> <p>5 be involved or even consider</p> <p>6 discussions or get-togethers or</p> <p>7 anything to do with pricing. And so,</p> <p>8 therefore, even if it entailed</p> <p>9 meetings that were members of both, it</p> <p>10 could not be addressed or referenced</p> <p>11 as a UEA effort.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. Who is Ike in the next</p> <p>14 sentence, "I like Ike..."?</p> <p>15 A. Ike is Irving Isaacson that I</p> <p>16 referenced to before who was at one time, I</p> <p>17 don't know if it was at this time, was</p> <p>18 counsel -- or general counsel for UEP.</p> <p>19 Q. You further stated, "...but I</p> <p>20 don't want to provide more work for him this</p> <p>21 way!!!"</p> <p>22 Why would you provide more work</p> <p>23 for him this way?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 96</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 You're asking a fact witness for his</p> <p>3 lay opinion, you're not seeking legal</p> <p>4 advice?</p> <p>5 MS. SMITH: Correct.</p> <p>6 MR. DAVIS: I also object to the</p> <p>7 extent that this calls for any advice</p> <p>8 that came from counsel for UEP.</p> <p>9 MS. ANDERSON: My instruction is</p> <p>10 the same as before, Mr. Catherman.</p> <p>11 You can answer the question if you can</p> <p>12 do so without revealing any legal</p> <p>13 advice from counsel for Michael Foods</p> <p>14 or UEP.</p> <p>15 THE WITNESS: Then I can't.</p> <p>16 BY MS. SMITH:</p> <p>17 Q. Who is Dan Meagher?</p> <p>18 A. I don't know that name, you may</p> <p>19 be mispronouncing the last name.</p> <p>20 Q. I'm going to spell the name.</p> <p>21 A. Okay.</p> <p>22 Q. M-E-A-G-H-E-R.</p> <p>23 A. Dan Meagher.</p> <p>24 Q. Meagher.</p> <p>25 A. He was, I believe, the</p>
<p style="text-align: right;">Page 95</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MR. DAVIS: Objection to the</p> <p>3 extent that it calls for any UEP</p> <p>4 privileged information.</p> <p>5 MS. ANDERSON: You can answer</p> <p>6 the question without revealing any</p> <p>7 legal information -- I'm sorry, legal</p> <p>8 advice that UEP's counsel may have</p> <p>9 given you.</p> <p>10 THE WITNESS: My understanding</p> <p>11 was, as I cited before, UEA could</p> <p>12 never be involved in any price</p> <p>13 discovery or any other pricing</p> <p>14 discussions so, therefore, I wanted to</p> <p>15 make sure that any references that I</p> <p>16 was involved in, and at this time I</p> <p>17 believe I might have still been chair,</p> <p>18 that I was not going to expose UEA to</p> <p>19 inaccuracies that could create legal</p> <p>20 challenge.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Why can't UEA be involved in</p> <p>23 any price discussions?</p> <p>24 MS. ANDERSON: I'm going to</p> <p>25 object to the form of the question.</p>	<p style="text-align: right;">Page 97</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 president of Moark's egg products division.</p> <p>3 Q. Who is Dana Persson?</p> <p>4 A. He was a CEO of Golden Oval Egg</p> <p>5 Products.</p> <p>6 Q. Who is Brian Hayward?</p> <p>7 A. Brian is vice president of</p> <p>8 sales for Crystal Farms, Creighton Brothers.</p> <p>9 Q. Were you correcting yourself or</p> <p>10 is that --</p> <p>11 A. Creighton Brothers, Crystal</p> <p>12 Farms are the same entity. So I'm not sure</p> <p>13 if one is just a trade member, the other one</p> <p>14 is a corporate name. I've seen him use both.</p> <p>15 Q. Who is Norm Stocker?</p> <p>16 A. Norm Stocker back at this time</p> <p>17 was probably director of procurement for</p> <p>18 Cargill. I believe that was his title.</p> <p>19 Q. Were all of these people</p> <p>20 members of the Sub-Committee for Egg Products</p> <p>21 Price Discovery?</p> <p>22 MS. ANDERSON: Object to the</p> <p>23 form of the question. Vague and</p> <p>24 ambiguous.</p> <p>25 THE WITNESS: I don't recall.</p>

25 (Pages 94 - 97)

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<p style="text-align: right;">Page 98</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Catherman-10, Agenda</p> <p>4 and Minutes, Bates MFI0007263 -</p> <p>5 MFI0007266, was marked for</p> <p>6 identification.)</p> <p>7 - - -</p> <p>8 BY MS. SMITH:</p> <p>9 Q. Mr. Catherman, I'm showing you</p> <p>10 a document Bates stamped MFI0007263 through</p> <p>11 7266. The first page titles it "UEP</p> <p>12 Sub-Committee for Egg Product Market</p> <p>13 Discovery Washington DC October 10, 2005."</p> <p>14 You can review the document.</p> <p>15 A. Yes, I'm reading it.</p> <p>16 [Reviewing document.]</p> <p>17 Okay.</p> <p>18 Q. On the first page marked</p> <p>19 "Agenda," the second point says, "Review</p> <p>20 Minutes from previous meeting." Correct?</p> <p>21 A. Yes.</p> <p>22 Q. And then if you turn to the</p> <p>23 third page of the document, Bates stamp</p> <p>24 MFI0007265, are those the minutes from the</p> <p>25 previous meeting?</p>	<p style="text-align: right;">Page 100</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 but who did Larry Seger work for?</p> <p>3 A. Wabash Valley.</p> <p>4 Q. Now, if you look further down</p> <p>5 on the document, it lists under point 4,</p> <p>6 "Norm Stocker of Sunny Fresh Foods was to</p> <p>7 investigate the possible trading through</p> <p>8 Cargill."</p> <p>9 Was Norm Stocker part of the</p> <p>10 working group?</p> <p>11 A. I don't recall.</p> <p>12 Q. But the working group,</p> <p>13 according to these minutes, asked Mr. Stocker</p> <p>14 to investigate the possible trading through</p> <p>15 Cargill?</p> <p>16 A. It would be implied here that</p> <p>17 that was going to be -- to occur.</p> <p>18 Q. Do you know Norm Stocker</p> <p>19 personally?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall him ever</p> <p>22 attending subcommittee -- meetings of the</p> <p>23 Sub-Committee for Egg Products Price</p> <p>24 Discovery?</p> <p>25 A. I don't recall him attending</p>
<p style="text-align: right;">Page 99</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. It would appear so.</p> <p>3 Q. The committee chairman -- it</p> <p>4 states on the top, "Committee Chairman Dan</p> <p>5 Meagher called the meeting to order at 9:30</p> <p>6 AM with the following being present." And</p> <p>7 then it lists "Dan Meagher - Dana Persson -</p> <p>8 Larry Seger - Toby Catherman - Brian</p> <p>9 Hayward."</p> <p>10 Were all these people members</p> <p>11 of the committee -- Sub-Committee for Egg</p> <p>12 Products Price Discovery?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question. Vague and</p> <p>15 ambiguous.</p> <p>16 THE WITNESS: I believe all the</p> <p>17 people were part of the working group</p> <p>18 that was put together. I still</p> <p>19 challenge the idea of a price</p> <p>20 discovery or a subcommittee.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Larry Seger was part of that</p> <p>23 working group?</p> <p>24 A. It would reflect so, yes.</p> <p>25 Q. I know you stated this earlier,</p>	<p style="text-align: right;">Page 101</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 any of the working group meetings.</p> <p>3 Q. But the working group asked him</p> <p>4 to do work for them?</p> <p>5 A. That's what's reflected here.</p> <p>6 Q. Was Sunny Fresh a member of the</p> <p>7 UEA?</p> <p>8 A. Yes.</p> <p>9 Q. Was Sunny Fresh a member of</p> <p>10 UEP?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question.</p> <p>15 THE WITNESS: The best question</p> <p>16 is to ask UEP.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. What does Sunny Fresh do? What</p> <p>19 is their business model?</p> <p>20 A. Sunny Fresh is a food service,</p> <p>21 primary food service egg processor and</p> <p>22 marketer.</p> <p>23 MS. SMITH: Take a break.</p> <p>24 VIDEOGRAPHER: This ends disc</p> <p>25 number two of the Catherman</p>

## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 102</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 deposition. The time is 11:21:43.</p> <p>3 Off the record.</p> <p>4 - - -</p> <p>5 (A recess was taken.)</p> <p>6 - - -</p> <p>7 VIDEOGRAPHER: On the record</p> <p>8 with disc number three of the</p> <p>9 testimony of Toby Catherman in the</p> <p>10 matter of Processed Egg Products. The</p> <p>11 date is March 18, 2014. The time is</p> <p>12 11:35:23.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Hi, Mr. Catherman.</p> <p>15 Who is John Brommer?</p> <p>16 A. John Brommer is a sales</p> <p>17 representative for Michael Foods.</p> <p>18 Q. Did you work with Mr. Brommer</p> <p>19 at Michael Foods?</p> <p>20 A. Yes. Actually I had hired him</p> <p>21 way back in the Quaker State days, so he --</p> <p>22 worked with him on and off since early '80s.</p> <p>23 Q. Did he report to you?</p> <p>24 A. He did during that Quaker State</p> <p>25 period and also during the short period where</p>	<p style="text-align: right;">Page 104</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. [Reviewing document.] Okay.</p> <p>3 Q. I'll just ask you a few</p> <p>4 questions first.</p> <p>5 Michael Foods signed onto the</p> <p>6 Animal Care Certified Program or the UEP</p> <p>7 Certified Program in 2006. Correct?</p> <p>8 MS. ANDERSON: Object to the</p> <p>9 form of the question.</p> <p>10 THE WITNESS: Yes, I believe it</p> <p>11 was sometime in 2006.</p> <p>12 BY MS. SMITH:</p> <p>13 Q. And who is the United States</p> <p>14 Egg Marketers?</p> <p>15 A. It was a separate group of</p> <p>16 producers that were organized into this group</p> <p>17 to export shell eggs.</p> <p>18 Q. And if I use the term "USEM,"</p> <p>19 is that the United States Egg Marketers?</p> <p>20 A. Yes.</p> <p>21 Q. Is Michael Foods a member of</p> <p>22 USEM?</p> <p>23 A. Never.</p> <p>24 Q. So back to the document. The</p> <p>25 top of the document starts, "Laura," and then</p>
<p style="text-align: right;">Page 103</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 I was the industrial VP, that two- or</p> <p>3 three-year period.</p> <p>4 Q. When did you say that was?</p> <p>5 A. I think it was 2000 to 2003,</p> <p>6 somewhere in that window, give or take a</p> <p>7 year.</p> <p>8 Q. Do you know who Laura Lyon is?</p> <p>9 A. I don't recall.</p> <p>10 - - -</p> <p>11 (Exhibit Catherman-11, E-mail</p> <p>12 chain, Bates MFI0322904 - MFI0322907,</p> <p>13 was marked for identification.)</p> <p>14 - - -</p> <p>15 BY MS. SMITH:</p> <p>16 Q. I'm just going to read it into</p> <p>17 the record. This has been marked Catherman</p> <p>18 Exhibit 10 -- 11 with Bates range MFI0322904</p> <p>19 through 907. It's an e-mail chain from</p> <p>20 March 2007 with the subject, "Sacramento dry</p> <p>21 whole." The initial e-mails are between</p> <p>22 Laura Lyon and John Brommer. And the final</p> <p>23 e-mail is between Mr. Brommer and you, Mr.</p> <p>24 Catherman. Why don't you take a moment to</p> <p>25 review through.</p>	<p style="text-align: right;">Page 105</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 it goes, "Toby..." Looking at this document,</p> <p>3 do you believe the initial e-mail was</p> <p>4 addressed to you?</p> <p>5 A. That the initial e-mail?</p> <p>6 Q. Right, the very top e-mail.</p> <p>7 MS. ANDERSON: The last e-mail.</p> <p>8 BY MS. SMITH:</p> <p>9 Q. The last e-mail, but the top</p> <p>10 e-mail in this chain.</p> <p>11 A. Yes, the last e-mail is</p> <p>12 addressed to me, it's -- apparently John</p> <p>13 didn't incorporate some of the format I do.</p> <p>14 When I refer to somebody I've created an</p> <p>15 e-mail, and on top that has placed an inquiry</p> <p>16 to somebody else for review. Although in</p> <p>17 poor shape, you should have put lines or some</p> <p>18 other way to make sure you distinguish the</p> <p>19 formatting.</p> <p>20 Q. Mr. Brommer wrote, "Toby, I</p> <p>21 want to use this to reply to Laura Lyon at</p> <p>22 Campbell. See her note below." Correct?</p> <p>23 A. That's what's cited here.</p> <p>24 Q. "Please review this, correcting</p> <p>25 any stated errors. I did not know feed/egg</p>

27 (Pages 102 - 105)

## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 106</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 costs so they will most likely be incorrect.</p> <p>3 I don't like parts of it but on average it</p> <p>4 works." Correct?</p> <p>5 A. That's what is cited.</p> <p>6 Q. Did you review this letter from</p> <p>7 Mr. Brommer?</p> <p>8 A. I do not recall if I did or</p> <p>9 not.</p> <p>10 Q. Would it be your normal</p> <p>11 business practice to review letters addressed</p> <p>12 to you with -- requesting help?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question. Lacks</p> <p>15 foundation.</p> <p>16 THE WITNESS: Yes, it would.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. I'm going to go to the second</p> <p>19 page of the document MFI0322905. And I'm</p> <p>20 going to go to the bottom of the page which</p> <p>21 is an e-mail from John Brommer to Laura Lyon.</p> <p>22 Mr. Brommer stated, "The market</p> <p>23 is right at the \$2.30 we quoted. Easter</p> <p>24 inventories are starting to be built and</p> <p>25 another export to Europe has been completed</p>	<p style="text-align: right;">Page 108</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Ms. Lyon wrote to Mr. Brommer,</p> <p>3 "I don't believe a bit of it. Who's the big</p> <p>4 exporter? My understanding is that they're</p> <p>5 selling at a loss to what they can make here</p> <p>6 so why would they want to do that? Inventory</p> <p>7 levels are well above last year and the feed</p> <p>8 isn't yet making that big of an impact. It</p> <p>9 would be nice if someday they figured it out</p> <p>10 and rather than manipulate prices and UB</p> <p>11 folks, they'd work on a fair market basis.</p> <p>12 (I'm not saying this about any one</p> <p>13 manufacturer in particular but the industry</p> <p>14 as a whole). There's no rhyme or reason to</p> <p>15 any of it."</p> <p>16 Is that correct?</p> <p>17 A. That is what's written here.</p> <p>18 Q. Do you know who the big</p> <p>19 exporter Ms. Lyon is referring to?</p> <p>20 MS. ANDERSON: Object to the</p> <p>21 form of the question. Ms. Lyon is not</p> <p>22 referring to one. She's asking who it</p> <p>23 is.</p> <p>24 MS. SMITH: Correct. Strike</p> <p>25 that.</p>
<p style="text-align: right;">Page 107</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 with yet another one pending. The egg</p> <p>3 producers have kept the market tight trying</p> <p>4 to hold on to their gains through Easter.</p> <p>5 They are being pressured by this \$4.00 corn</p> <p>6 to keep the market up."</p> <p>7 Is that correct?</p> <p>8 A. That is what's cited.</p> <p>9 Q. In your experience in</p> <p>10 procurement in March 2007, and based on Mr.</p> <p>11 Brommer's question, was that correct as Mr.</p> <p>12 Brommer stated?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question.</p> <p>15 THE WITNESS: I truly don't</p> <p>16 remember those market conditions, if</p> <p>17 those numbers were correct at the</p> <p>18 time. \$4 corn would put cost</p> <p>19 pressures on historical levels of</p> <p>20 pricing.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Do you recall an export to</p> <p>23 Europe in March 2007 with another export</p> <p>24 pending?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 109</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SMITH:</p> <p>3 Q. Do you know who the big</p> <p>4 exporter Ms. Lyon is questioning about is?</p> <p>5 A. Based on the latter part of the</p> <p>6 e-mail where it's speaking about exports</p> <p>7 going to Europe, and another one pending, I</p> <p>8 would -- it would be inferred in my memory</p> <p>9 that, yes, it would be U.S. Egg Marketers.</p> <p>10 They were the agency exporting at that time</p> <p>11 over those multiple periods of time.</p> <p>12 Q. I'm going to move up to the</p> <p>13 next e-mail which is the e-mail that Mr.</p> <p>14 Brommer wrote and asked you to review. He</p> <p>15 wrote, The Exporter is a group called UEP</p> <p>16 (United Egg Producers) whose membership is</p> <p>17 the layer hen owners in America today. They</p> <p>18 are selling at a loss to support the domestic</p> <p>19 markets prices. There was an export that</p> <p>20 concluded in early March and they tentatively</p> <p>21 have another scheduled for mid April. Each</p> <p>22 of these exports included approximately 300</p> <p>23 containers of 800 - 30 dozen cases.</p> <p>24 Is that what it says?</p> <p>25 A. That's what's cited here.</p>

28 (Pages 106 - 109)

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<p style="text-align: right;">Page 110</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you disagree with any of</p> <p>3 the statements Mr. Brommer made in this</p> <p>4 e-mail?</p> <p>5 A. I don't recall my reaction to</p> <p>6 it, but I would cite right away that</p> <p>7 obviously the first statement there</p> <p>8 referencing UEP was an error. The second</p> <p>9 clarifications that selling at a loss is a</p> <p>10 poor domestic market is not a phrase that I</p> <p>11 would support being advanced to a customer.</p> <p>12 Q. You wouldn't support it being</p> <p>13 advanced to a customer, but was the statement</p> <p>14 itself true?</p> <p>15 A. I don't know. I don't know</p> <p>16 what their costs are.</p> <p>17 Q. In the last paragraph starting</p> <p>18 with "Fair pricing...", Mr. Brommer wrote,</p> <p>19 "Fair pricing: The egg market was too low</p> <p>20 too long and this type of market reaction is</p> <p>21 what keeps the growers profitable."</p> <p>22 Do you know what he meant by</p> <p>23 "this type of market reaction"?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question. Calls for</p>	<p style="text-align: right;">Page 112</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 activities. My information would come</p> <p>3 from friends of the industry that</p> <p>4 maybe some of the members or not, but</p> <p>5 that would talk about maybe what they</p> <p>6 were doing and/or conversations I had</p> <p>7 with Urner Barry on what they were</p> <p>8 hearing.</p> <p>9 - - -</p> <p>10 (Exhibit Catherman-12, 1/3/07</p> <p>11 Fax with attachment, Bates MFI0322666</p> <p>12 - MFI0322675, was marked for</p> <p>13 identification.)</p> <p>14 - - -</p> <p>15 BY Ms. SMITH:</p> <p>16 Q. Mr. Catherman, I'm showing you</p> <p>17 a document Bates stamped MFI0322666 through</p> <p>18 675. Indicates --</p> <p>19 MS. ANDERSON: Are you marking</p> <p>20 it Exhibit 12?</p> <p>21 MS. SMITH: It's being marked as</p> <p>22 Exhibit 12.</p> <p>23 BY MS. SMITH:</p> <p>24 Q. I'm unclear if this is a fax or</p> <p>25 an e-mail, but I'll inquire of that when you</p>
<p style="text-align: right;">Page 111</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 speculation.</p> <p>3 THE WITNESS: I would assume</p> <p>4 you'd have to ask Mr. Brommer.</p> <p>5 BY MS. SMITH:</p> <p>6 Q. Did you ask Mr. Brommer what he</p> <p>7 meant when he sent this to you?</p> <p>8 A. I don't recall if I did or not.</p> <p>9 I probably would have stricken that.</p> <p>10 Obviously this is not my response, so I'm not</p> <p>11 sure how I responded to this.</p> <p>12 Q. Do you recall if as an employee</p> <p>13 of Michael Foods you were ever asked by USEM</p> <p>14 to export eggs?</p> <p>15 A. No. Because you had to be a</p> <p>16 member of U.S. Egg Marketers to do the</p> <p>17 exporting.</p> <p>18 Q. Were you kept informed by USEM</p> <p>19 of when they were sending -- when they were</p> <p>20 exporting eggs?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question.</p> <p>23 THE WITNESS: Absolutely not.</p> <p>24 Never had any direct conversations</p> <p>25 with U.S. Egg Marketers about their</p>	<p style="text-align: right;">Page 113</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 review it. The document is from January 3,</p> <p>3 2007.</p> <p>4 First, is this a fax or an</p> <p>5 e-mail?</p> <p>6 A. This looks like it was an</p> <p>7 electronic fax.</p> <p>8 Q. Did you sometimes receive faxes</p> <p>9 to your e-mail account?</p> <p>10 A. Yes, I had an electronic fax</p> <p>11 number that went into my e-mail account,</p> <p>12 correct.</p> <p>13 Q. Now, it indicates it's from</p> <p>14 RightFax E-mail Gateway. Do you know who</p> <p>15 RightFax E-mail Gateway is?</p> <p>16 A. No idea.</p> <p>17 Q. Do you recall receiving this</p> <p>18 fax?</p> <p>19 A. No, I don't. But after looking</p> <p>20 at it, I do remember look at specifications</p> <p>21 for the exports as a way of gaining knowledge</p> <p>22 of what the industry was doing with their</p> <p>23 exports. Again, part of my job to understand</p> <p>24 what somebody -- what activities are going on</p> <p>25 there, what would be the quality of the egg</p>

29 (Pages 110 - 113)

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<p style="text-align: right;">Page 114</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 they were exporting, what are their</p> <p>3 requirements and all those factors would be</p> <p>4 of interest of me, to me I should say.</p> <p>5 Q. If you look at the top of the</p> <p>6 second page Bates stamped MFI0322667, and</p> <p>7 then you look at the fax kind of line at the</p> <p>8 very, very top, it's dated 1/3/2007, and it</p> <p>9 says 11:26. And it indicates UEP. Would</p> <p>10 this fax have come to you by way of UEP?</p> <p>11 A. I don't recall.</p> <p>12 Q. Do you recall if the UEP kept</p> <p>13 you apprised of USEM's activities?</p> <p>14 A. No, they did not.</p> <p>15 Q. Do you recall if an employee of</p> <p>16 UEP would keep you apprised of USEM's</p> <p>17 activities?</p> <p>18 A. They would not.</p> <p>19 Q. It says on it "APPROVED," and</p> <p>20 then I can't really make out what is</p> <p>21 underneath that.</p> <p>22 MS. ANDERSON: Are you on 2667?</p> <p>23 MS. SMITH: Correct.</p> <p>24 BY MS. SMITH:</p> <p>25 Q. Do you see who stamped it</p>	<p style="text-align: right;">Page 116</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 facilities. So I'm assuming, which</p> <p>3 would be the case, that any product</p> <p>4 that was labeled USDA had to be</p> <p>5 approved by Washington for its</p> <p>6 labeling. The labeling mechanism</p> <p>7 and/or what they were inspecting for</p> <p>8 had to be approved by Washington. So</p> <p>9 the assumption I have, by looking at</p> <p>10 this, from my experience, is that</p> <p>11 Roger approved the inspection -- the</p> <p>12 guidelines for the quality and the</p> <p>13 criteria for eggs being exported that</p> <p>14 his inspectors, USDA being that, would</p> <p>15 follow when they were approving and</p> <p>16 preparing and inspecting product prior</p> <p>17 to shipment for export.</p> <p>18 BY MS. SMITH:</p> <p>19 Q. Do you know what the egg</p> <p>20 procurement update is?</p> <p>21 A. It's too general of a question.</p> <p>22 Q. Did the UEP ever send out</p> <p>23 something called the egg procurement update?</p> <p>24 A. Not that I recall. Using</p> <p>25 that -- they had a newsletter, but other than</p>
<p style="text-align: right;">Page 115</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 approved, and I believe it says, "Poultry</p> <p>3 Division, Grading Branch"?</p> <p>4 A. Yes. It was Roger Glassoff who</p> <p>5 was the undersecretary, I believe, at the</p> <p>6 time at USDA.</p> <p>7 Q. Now, do you have an</p> <p>8 understanding of what he approved?</p> <p>9 MR. DAVIS: Objection. Calls</p> <p>10 for speculation.</p> <p>11 THE WITNESS: I really -- I have</p> <p>12 no idea.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. Did he approve this U.S. Egg</p> <p>15 Markets European Export Class 1 Net Run?</p> <p>16 MR. DAVIS: Same objection.</p> <p>17 Calls for speculation. Lacks</p> <p>18 foundation.</p> <p>19 MS. ANDERSON: You can answer</p> <p>20 the question.</p> <p>21 THE WITNESS: Well, I mean,</p> <p>22 Roger Glassoff's responsibility at the</p> <p>23 time, if I'm correct, was he was a</p> <p>24 senior over all the USDA egg</p> <p>25 inspectors and shell egg processing</p>	<p style="text-align: right;">Page 117</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 that. A newsletter, a calendar, that type of</p> <p>3 thing.</p> <p>4 Q. I'm going to show you another</p> <p>5 document.</p> <p>6 - - -</p> <p>7 (Exhibit Catherman-13, 12/22/06</p> <p>8 E-mail with attachment, Bates</p> <p>9 MFI0104583 - MFI0104585, was marked</p> <p>10 for identification.)</p> <p>11 - - -</p> <p>12 BY MS. SMITH:</p> <p>13 Q. I'm showing you what has been</p> <p>14 marked Catherman Exhibit-13, Bates stamped</p> <p>15 MFI0104583 through 585.</p> <p>16 It's an e-mail from Lowell</p> <p>17 Ostrand to you, Mr. Catherman, and Terry</p> <p>18 Baker with the subject, Egg Procurement</p> <p>19 Update for the week of December 24 through</p> <p>20 December 30, from December 22, 2006.</p> <p>21 MS. ANDERSON: The e-mail is</p> <p>22 from December 22, 2006. Right?</p> <p>23 MS. SMITH: Correct.</p> <p>24 THE WITNESS: Yes, I'm familiar</p> <p>25 with these. Do you have a question?</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 118</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SMITH:</p> <p>3 Q. Now, what is the egg</p> <p>4 procurement update?</p> <p>5 A. This is an internal highly</p> <p>6 confidential update which is given to various</p> <p>7 key managers inside Michael Foods about our</p> <p>8 current sourcing level.</p> <p>9 Q. I'm going to direct your</p> <p>10 attention to, on the first page, it's not a</p> <p>11 second bullet point, but it's the second</p> <p>12 paragraph under the first bullet point, and</p> <p>13 it says on the document, U.S. Egg Marketers,</p> <p>14 bracket, a UEP exporting producer's</p> <p>15 organization, close paren -- sorry, not</p> <p>16 bracket, "...apparently has agreed to a shell</p> <p>17 egg export of 300 loads with shipments from</p> <p>18 1/8 through 2/2/07 at delivered port pricing</p> <p>19 of \$.40. This will immediately stop the free</p> <p>20 fall of the egg markets. We expect the large</p> <p>21 markets will now hold at current levels and</p> <p>22 move upward before late January. We did</p> <p>23 expect this export but it is occurring about</p> <p>24 3 weeks earlier than originally thought."</p> <p>25 Is that correct?</p>	<p style="text-align: right;">Page 120</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. SMITH: Well, he answered</p> <p>3 that he would stop.</p> <p>4 MS. ANDERSON: You didn't like</p> <p>5 his answer, you can ask it again. You</p> <p>6 can repeat your answer if you'd like,</p> <p>7 but you've already answered the</p> <p>8 question.</p> <p>9 BY MS. SMITH:</p> <p>10 Q. I just want to understand what</p> <p>11 "free fall" means in this statement?</p> <p>12 A. My reference would be as</p> <p>13 apparently the markets were on a declining</p> <p>14 period as historically would be the norm</p> <p>15 considering the time of the year, being</p> <p>16 immediately at the holiday, at post Christmas</p> <p>17 market. History would recite that I think</p> <p>18 probably out of -- 19 out of 20 years the</p> <p>19 markets go down somewhere within a week or</p> <p>20 two of Christmas.</p> <p>21 Q. Within a week or two of</p> <p>22 Christmas would you typically categorize the</p> <p>23 egg market as being in a free-fall?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question.</p>
<p style="text-align: right;">Page 119</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. That's what is cited there.</p> <p>3 Q. Did you write that?</p> <p>4 A. I don't recall writing it, but</p> <p>5 it would appear as I did.</p> <p>6 Q. What did you mean by, "This</p> <p>7 will immediately stop the free fall of the</p> <p>8 egg markets"?</p> <p>9 A. Any time historically there was</p> <p>10 an export or any kind of event, animal</p> <p>11 disease or something like that, becoming</p> <p>12 aware in the marketplace, the marketplace</p> <p>13 would stop. Any spot trades would stop and</p> <p>14 everybody would start reevaluating their</p> <p>15 inventory positions and that type of stuff</p> <p>16 before any activity would continue. Whether</p> <p>17 they were surplus or not, it was all about</p> <p>18 stopping, freezing for a period of time to</p> <p>19 understand really what is the cause and</p> <p>20 effect of what's the latest buzz.</p> <p>21 Q. What did you mean by "the free</p> <p>22 fall of the egg markets"?</p> <p>23 MS. ANDERSON: Objection. You</p> <p>24 just asked him that question and he</p> <p>25 just answered you.</p>	<p style="text-align: right;">Page 121</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: That would be my</p> <p>3 reference for it. Often during that</p> <p>4 period of time you have a -- the</p> <p>5 highest percentage correction in the</p> <p>6 graded large markets that occurs</p> <p>7 during a period of the year. So if</p> <p>8 the most dynamic and highest</p> <p>9 percentage of market adjustment is</p> <p>10 occurring, I would call it a</p> <p>11 free-fall. Or it could be a skyrocket</p> <p>12 if it was going the other way.</p> <p>13 BY MS. SMITH:</p> <p>14 Q. It says -- did the export stop</p> <p>15 the free-fall of the egg markets in 2007?</p> <p>16 MS. ANDERSON: Object to the</p> <p>17 form of the question. Lacks</p> <p>18 foundation.</p> <p>19 THE WITNESS: I don't really</p> <p>20 recall.</p> <p>21 BY MS. SMITH:</p> <p>22 Q. Who is Ken Klippen? You can</p> <p>23 put that document away.</p> <p>24 A. Ken Klippen at one time was the</p> <p>25 -- a lobbyist for UEP. He was also as --</p>

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<p style="text-align: right;">Page 122</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 during that function, he was working as our</p> <p>3 direct contact as the UEP staff person for</p> <p>4 UEA.</p> <p>5 Q. You said "our." What do you</p> <p>6 mean "our"?</p> <p>7 A. UEA's -- UEA always had a</p> <p>8 person on the UEP staff since they were a</p> <p>9 hired agency to run our sort of back room, if</p> <p>10 you want to call it that, as part of the UEA.</p> <p>11 So he was the staff representative, our only</p> <p>12 staff representative for UEA at one time.</p> <p>13 Q. Did Mr. Klippen work for</p> <p>14 Michael Foods?</p> <p>15 A. I don't believe he ever worked</p> <p>16 for Michael Foods as an employee.</p> <p>17 Q. Did he work for Michael Foods</p> <p>18 as a consultant?</p> <p>19 A. He worked for Michael Foods on</p> <p>20 a project that we had which was under an</p> <p>21 alternative Animal Welfare Food Safety</p> <p>22 Certification Program, but as an independent</p> <p>23 contractor.</p> <p>24 Q. Michael Foods had a program for</p> <p>25 an alternative Animal Welfare Food Safety</p>	<p style="text-align: right;">Page 124</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I guess I need you</p> <p>3 to restate that because the program</p> <p>4 never really -- it was being</p> <p>5 developed. It never was executed.</p> <p>6 BY MS. SMITH:</p> <p>7 Q. That's probably a better</p> <p>8 question. Was the Processed Verified Program</p> <p>9 ever executed by Mr. Klippen or the --</p> <p>10 A. It was developed by Mr.</p> <p>11 Klippen. It was never adapted or executed by</p> <p>12 Michael Foods. I don't have firsthand</p> <p>13 knowledge of any of the other working group</p> <p>14 actually executed any part of it. To the</p> <p>15 best of my knowledge, they did not.</p> <p>16 Q. Who is Jeff Henning?</p> <p>17 A. Jeff Henning is a -- the CEO of</p> <p>18 the company that is a major supplier to</p> <p>19 Michael Foods.</p> <p>20 Q. What company is that?</p> <p>21 A. Fremont Farms of Iowa. Sorry.</p> <p>22 He's not the CEO formally of that, but he is</p> <p>23 the lead or the largest stockholder or</p> <p>24 participated because the LLC, so he's</p> <p>25 probably the largest unit owner, if I can be</p>
<p style="text-align: right;">Page 123</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Program?</p> <p>3 A. There was a time that Michael</p> <p>4 Foods and other companies worked on a --</p> <p>5 working with Ken Klippen, he did it under his</p> <p>6 agency, to develop a verified process. I'm</p> <p>7 not sure of the exact formal name of it. But</p> <p>8 it was modeled after a USDA quality program</p> <p>9 which the industry could adapt. And it was</p> <p>10 very comprehensive to the point that it was</p> <p>11 working towards an Animal Welfare Husbandry</p> <p>12 Audit Program, but also then had -- took</p> <p>13 additional steps on controlling and</p> <p>14 addressing how product would be processed and</p> <p>15 packed and marketed and labeled to make sure</p> <p>16 that the integrity of the program was solid.</p> <p>17 Q. Have you ever heard of the</p> <p>18 Processed Verified Program?</p> <p>19 A. That's the program I was just</p> <p>20 referencing to. Thank you.</p> <p>21 Q. Did that Processed Verified</p> <p>22 Program ever become a program that Michael</p> <p>23 Foods joined?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question.</p>	<p style="text-align: right;">Page 125</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 corrected.</p> <p>3 Q. Who is -- do you know who Jim</p> <p>4 Adams is?</p> <p>5 A. Jim Adams is currently the CEO</p> <p>6 of Wenger's Feed Mill Incorporated.</p> <p>7 Q. And who is Wayne Carlson?</p> <p>8 A. Wayne Carlson was, I believe</p> <p>9 he's now retired, VP of sales for Sparboe</p> <p>10 Companies, I think is their formal name.</p> <p>11 Q. Do you know who Dave Rettig is?</p> <p>12 A. Dave Rettig is CEO president of</p> <p>13 Rembrandt Enterprises.</p> <p>14 - - -</p> <p>15 (Exhibit Catherman-14, 1/4/07</p> <p>16 E-mail with attachment, Bates</p> <p>17 MFI0037476 - MFI0037478, was marked</p> <p>18 for identification.)</p> <p>19 - - -</p> <p>20 BY MS. SMITH:</p> <p>21 Q. We're showing you an exhibit</p> <p>22 marked Catherman-14, Bates stamped</p> <p>23 MFI003746 -- I'm sorry, I read that wrong.</p> <p>24 37476 through 478. It's an e-mail from you</p> <p>25 to a host of people that -- including O'Brien</p>

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<p style="text-align: right;">Page 126</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 S. -- S. Vince O'Brien, Gregg Ostrander,</p> <p>3 Terry Baker, Michael Elliott, Diane Sparish,</p> <p>4 Mark Anderson, Charles Bailey, Jim Mohr, Mark</p> <p>5 Westphal, Ronn Seim and Tim Bebee with the</p> <p>6 subject "Klippen Animal Welfare Program" from</p> <p>7 January 4, 2007.</p> <p>8 Would you take a moment to read</p> <p>9 through.</p> <p>10 A. [Reviewing document.] Okay.</p> <p>11 Q. Mr. Catherman, this is an</p> <p>12 e-mail, I believe, that indicates it's a --</p> <p>13 the attachment is a summary of activities for</p> <p>14 the alternative Animal Welfare Program. Is</p> <p>15 that correct?</p> <p>16 A. Yes.</p> <p>17 Q. These are your notes?</p> <p>18 A. I believe they are.</p> <p>19 Q. This summary indicates you were</p> <p>20 a member of the committee for the Klippen</p> <p>21 Animal Welfare Guidelines Processed Verified</p> <p>22 Program?</p> <p>23 MS. ANDERSON: Object to the</p> <p>24 form of the question. Foundation.</p> <p>25 THE WITNESS: Yes, it is there.</p>	<p style="text-align: right;">Page 128</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. Then the first point is,</p> <p>4 "Participation: Layer House not 100%</p> <p>5 ownership requirement." What does that mean?</p> <p>6 MS. ANDERSON: Object to the</p> <p>7 form of the question.</p> <p>8 THE WITNESS: The significant</p> <p>9 deviation that we had and always had</p> <p>10 with the UEP Certified Program early</p> <p>11 on was the 100 percent rule. This</p> <p>12 program was advancing without the 100</p> <p>13 percent rule as one would know it from</p> <p>14 the UEP Certified Program.</p> <p>15 BY MS. SMITH:</p> <p>16 Q. And the next point it states,</p> <p>17 "No logo, USDA shield available for tier 1</p> <p>18 individual company participants." What does</p> <p>19 that mean?</p> <p>20 A. Part of the program is, is</p> <p>21 unlike the UEP program which had a logo, we</p> <p>22 would use a USDA shield. USDA had a verified</p> <p>23 process shield that you could put on your</p> <p>24 product. And we obviously thought that that</p> <p>25 meant significantly more to our customer base</p>
<p style="text-align: right;">Page 127</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SMITH:</p> <p>3 Q. Now, its title -- it lists</p> <p>4 "Committee Expectations." Do you see where</p> <p>5 I'm reading?</p> <p>6 A. Yes.</p> <p>7 Q. It states that this is a</p> <p>8 "Scientific committee for husbandry program."</p> <p>9 What does that mean?</p> <p>10 A. The listing there, what are the</p> <p>11 committee's expectations of the program. So</p> <p>12 the expectation was that there would be a</p> <p>13 scientific committee established for the</p> <p>14 husbandry program of this.</p> <p>15 Q. The committee -- the next point</p> <p>16 it states, "Mirror UEP program." What does</p> <p>17 that mean?</p> <p>18 A. It means that the committee</p> <p>19 expected that whatever program was advanced</p> <p>20 would mirror UEP's existing certified</p> <p>21 program.</p> <p>22 Q. And then if you go to the next</p> <p>23 page, at the top of the page it lists</p> <p>24 "Comparison Klippen to UEP Certified."</p> <p>25 Correct?</p>	<p style="text-align: right;">Page 129</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 than a UEP logo.</p> <p>3 Q. And the third point is that</p> <p>4 "Audits on all grading/breaking programs, UEP</p> <p>5 only required for non-certified companies."</p> <p>6 Is that correct?</p> <p>7 A. That's what's cited here.</p> <p>8 Q. What does that mean?</p> <p>9 A. The program was going to</p> <p>10 require that -- obviously that's cited --</p> <p>11 that there were going to be audits on all</p> <p>12 grading and breaking programs. The UEP</p> <p>13 program, as we've spoken about before, did</p> <p>14 not. It basically stopped at the layer house</p> <p>15 or in an upgrading machine or packing room or</p> <p>16 something like that.</p> <p>17 Q. The bottom point states,</p> <p>18 "Documentation intense." Correct?</p> <p>19 A. Yes.</p> <p>20 Q. What does that mean?</p> <p>21 A. This program is going to be an</p> <p>22 ISO-based program. So if you're familiar</p> <p>23 with ISO in any way, you'll recall that</p> <p>24 unlike the UEP program or other programs, it</p> <p>25 requires documentation and training. It</p>

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<p style="text-align: right;">Page 130</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 requires how often documents are reviewed,</p> <p>3 how often things are checked. So it was</p> <p>4 extremely an intense program. If I remember</p> <p>5 right, this was unlike the certified program</p> <p>6 which I think was about eight pages. If I</p> <p>7 recall, this was over 80 pages.</p> <p>8 Q. Does ISO stand for something?</p> <p>9 ISO?</p> <p>10 A. Yeah, ISO.</p> <p>11 Q. Is that an acronym for</p> <p>12 something?</p> <p>13 A. I don't know what it actually</p> <p>14 stands for. It's an international standards,</p> <p>15 it's -- you've never heard of ISO 900 and ISO</p> <p>16 301 and that type of stuff? Okay. It's an</p> <p>17 international standard adapted for high</p> <p>18 quality verifications and audits.</p> <p>19 Q. In the next section, it says,</p> <p>20 "Next Steps," and if you go to number 4, it</p> <p>21 says, "Possible UEP negotiation." What did</p> <p>22 you mean by that?</p> <p>23 A. I believe, my intent was to</p> <p>24 make sure that as we advanced this, that our</p> <p>25 program was at minimum mirrored, as it cited</p>	<p style="text-align: right;">Page 132</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Object to the</p> <p>3 form of the question.</p> <p>4 THE WITNESS: No, it did not.</p> <p>5 Not -- Michael Foods did not start up</p> <p>6 this program.</p> <p>7 BY MS. SMITH:</p> <p>8 Q. Do you know why?</p> <p>9 A. I would be speculating, so I</p> <p>10 don't remember actually.</p> <p>11 Q. Do you recall in 2007 the UEP</p> <p>12 being opposed to the Klippen Processed</p> <p>13 Verified Program?</p> <p>14 MS. ANDERSON: Object to the</p> <p>15 form of the question. Lacks</p> <p>16 foundation.</p> <p>17 THE WITNESS: I do recall that</p> <p>18 UEP was going to various lengths of</p> <p>19 trying to get an understanding of what</p> <p>20 the program was, who the participants</p> <p>21 were and what the strategy and/or</p> <p>22 purpose of the program would be.</p> <p>23 - - -</p> <p>24 (Exhibit Catherman-15, 10/11/07</p> <p>25 E-mail, Bates MFI0005090, was marked</p>
<p style="text-align: right;">Page 131</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 before, the UEP program except for the 100</p> <p>3 percent rule. So we wanted to make sure that</p> <p>4 as our program went forward, once it was</p> <p>5 complete, we would make it obvious to, and</p> <p>6 show it to UEP so they knew exactly what our</p> <p>7 program was and so there were no mysteries</p> <p>8 out there or misinformation. And as part of</p> <p>9 that, we would make sure that ongoing as UEP</p> <p>10 scientific committee made any changes, we</p> <p>11 would want to be aware of them, so make sure</p> <p>12 that we could file suit if we felt it was</p> <p>13 appropriate.</p> <p>14 Q. And on the bottom you wrote,</p> <p>15 "Michael's minimum requirements to advance."</p> <p>16 Do you see where I am?</p> <p>17 A. Yes.</p> <p>18 Q. The first is "UEP Certified</p> <p>19 product must be interchangeable into</p> <p>20 program." And the second point is, "Program</p> <p>21 startup by July 2007 or sooner." Is that</p> <p>22 correct?</p> <p>23 A. That's what's cited.</p> <p>24 Q. Did the program start up by</p> <p>25 July 2007 or sooner?</p>	<p style="text-align: right;">Page 133</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 for identification.)</p> <p>3 - - -</p> <p>4 BY MS. SMITH:</p> <p>5 Q. Mr. Catherman, I'm showing you</p> <p>6 Exhibit Catherman-15, Bates stamped</p> <p>7 MFI0005090. This is an e-mail from Ken</p> <p>8 Klippen to you, Terry Baker, Tim Bebee with a</p> <p>9 cc to Chris Klippen, from October 11, 2007,</p> <p>10 and the subject is "UEP's action may be</p> <p>11 legally actionable." Why don't you review</p> <p>12 it?</p> <p>13 A. Thank you.</p> <p>14 [Reviewing document.] Okay.</p> <p>15 Q. First, who is Chris Klippen?</p> <p>16 A. The brother of Ken Klippen, and</p> <p>17 he was an attorney who -- I believe who Ken</p> <p>18 had -- was using to represent his interest.</p> <p>19 Q. At this point in October of</p> <p>20 2007, was Mr. Klippen still working as a</p> <p>21 consultant for Michael Foods?</p> <p>22 A. I do not recall. I think we</p> <p>23 had terminated that arrangement right around</p> <p>24 that same time.</p> <p>25 Q. Mr. Klippen wrote, "Because you</p>

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<p style="text-align: right;">Page 134</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 asked me 'to rise above the fray' concerning</p> <p>3 UEP and their demeaning comments concerning</p> <p>4 what I am doing on behalf of my clients, I</p> <p>5 have followed your directions and limited any</p> <p>6 mentioning of them in my newsletters. UEP</p> <p>7 took exception recently with the invitation</p> <p>8 to me by a State University to discuss the</p> <p>9 Processed Verified Program in front of a</p> <p>10 group of egg producers. No doubt, you will</p> <p>11 hear more at UEP's meeting next week."</p> <p>12 Do you see where it says that?</p> <p>13 A. Yes.</p> <p>14 Q. Did I read that correctly?</p> <p>15 A. Go ahead.</p> <p>16 Q. Do you recall hearing about Mr.</p> <p>17 Klippen at a UEP meeting in October of 2007?</p> <p>18 A. I don't believe I recall having</p> <p>19 a public conversation. I do believe that I</p> <p>20 probably had a private one with Gene Gregory,</p> <p>21 as I did with Ken Klippen, both of them, sort</p> <p>22 of like cool their tools if I can say it just</p> <p>23 in slang. Both of them were -- a lot of</p> <p>24 animosity between the two of them that was</p> <p>25 getting to be extremely unprofessional, if I</p>	<p style="text-align: right;">Page 136</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Certification program is a profit center, the</p> <p>3 Board Member wondered if it is time for them</p> <p>4 to turn over the animal welfare issue to an</p> <p>5 independent organization like Klippen &amp;</p> <p>6 Associates, LLC? What is your reaction to</p> <p>7 this suggestion? As always, I value your</p> <p>8 thoughts on this matter."</p> <p>9 Do you recall agreeing that</p> <p>10 maybe it was time for the UEP -- strike that.</p> <p>11 What was your reaction to the</p> <p>12 idea of the UEP turning over the animal</p> <p>13 welfare issue to an independent organization</p> <p>14 like Klippen &amp; Associates?</p> <p>15 MR. DAVIS: Objection to form.</p> <p>16 THE WITNESS: I think it was</p> <p>17 pretty consistent with my opinion and</p> <p>18 the point that I did not believe UEP</p> <p>19 had the staff nor the expertise to</p> <p>20 manage a verification -- the certified</p> <p>21 program and that it should have been</p> <p>22 taken out to a third source from day</p> <p>23 one. That had been expressed with</p> <p>24 Gene Gregory in prior discussions from</p> <p>25 my viewpoint.</p>
<p style="text-align: right;">Page 135</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 could say it that way. So I think our</p> <p>3 caution, obviously it's noted here to both</p> <p>4 parties that, you know, we're in business.</p> <p>5 This isn't a play yard.</p> <p>6 Q. A little bit later in the</p> <p>7 paragraph Mr. Klippen wrote, "I called USDA</p> <p>8 to inform them also that UEP was objecting to</p> <p>9 my talking about their PVP approach to</p> <p>10 dealing with animal welfare. They are not</p> <p>11 happy with UEP."</p> <p>12 Do you recall a time when USDA</p> <p>13 was not happy with the UEP?</p> <p>14 MS. ANDERSON: Object to the</p> <p>15 form of the question. Lacks</p> <p>16 foundation.</p> <p>17 THE WITNESS: I don't have</p> <p>18 firsthand knowledge of that. I do</p> <p>19 remember Ken Klippen complaining about</p> <p>20 that and actually accusing Gene</p> <p>21 Gregory of visiting UEP -- USDA about</p> <p>22 this issue.</p> <p>23 BY MS. SMITH:</p> <p>24 Q. On the last paragraph Mr.</p> <p>25 Klippen writes, "Although the UEP</p>	<p style="text-align: right;">Page 137</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MS. SMITH:</p> <p>3 Q. But that never happened?</p> <p>4 MS. ANDERSON: Object to the</p> <p>5 form of the question. What never</p> <p>6 happened?</p> <p>7 BY MS. SMITH:</p> <p>8 Q. Do you understand?</p> <p>9 A. What's the question?</p> <p>10 Q. UEP never outsourced to a third</p> <p>11 party for animal welfare issues, did they?</p> <p>12 A. No.</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question. Remains vague.</p> <p>15 THE WITNESS: Not to my</p> <p>16 knowledge.</p> <p>17 BY MS. SMITH:</p> <p>18 Q. The subject of the e-mail is</p> <p>19 "UEP's action may be legally actionable."</p> <p>20 Correct?</p> <p>21 A. That's what's listed.</p> <p>22 Q. Do you know if Mr. Klippen took</p> <p>23 legal action against the UEP?</p> <p>24 A. No knowledge of that at all.</p> <p>25 Q. At this point -- strike that.</p>

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<p style="text-align: right;">Page 138</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Do you know where Mr. Klippen</p> <p>3 is now?</p> <p>4 A. No, I do not.</p> <p>5 Q. When was the last time you</p> <p>6 spoke with Mr. Klippen?</p> <p>7 A. Probably six years ago or more.</p> <p>8 MS. SMITH: I'm going to go off</p> <p>9 the record.</p> <p>10 VIDEOGRAPHER: This ends disc</p> <p>11 number three of the Catherman</p> <p>12 deposition. The time is 12:29:23.</p> <p>13 Off the record.</p> <p>14 - - -</p> <p>15 (A recess was taken.)</p> <p>16 - - -</p> <p>17 VIDEOGRAPHER: On the record</p> <p>18 with disc number four of the testimony</p> <p>19 of Toby Catherman in the matter of</p> <p>20 processed egg products. The date is</p> <p>21 March 18, 2014. The time is 1:05:53.</p> <p>22 - - -</p> <p>23 EXAMINATION</p> <p>24 - - -</p> <p>25 BY MR. BROWN:</p>	<p style="text-align: right;">Page 140</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 any UEP certified eggs?</p> <p>3 MS. ANDERSON: At what time,</p> <p>4 Counsel?</p> <p>5 MR. BROWN: The time of this</p> <p>6 document.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. If you go to the second page of</p> <p>9 this document, there's a note at the bottom</p> <p>10 that says, "April 2005." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So at the time of this</p> <p>13 document?</p> <p>14 A. At the time of this revision,</p> <p>15 which is April 2005, we were not a certified</p> <p>16 producer. I don't recall, I don't believe we</p> <p>17 had our marketing license either at that</p> <p>18 point, so we would not have been selling any</p> <p>19 UEP certified product.</p> <p>20 Q. Did you have customer requests</p> <p>21 to supply UEP certified eggs?</p> <p>22 A. Yes.</p> <p>23 Q. But you were not honoring those</p> <p>24 requests?</p> <p>25 A. We were marketing product that</p>
<p style="text-align: right;">Page 139</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Good afternoon, Mr. Catherman.</p> <p>3 My name is Stephen Brown. I represent the</p> <p>4 Direct Action Plaintiffs, Kraft, Kellogg,</p> <p>5 General Mills and Nestle.</p> <p>6 I'm going to be asking you some</p> <p>7 additional questions this afternoon.</p> <p>8 MS. ANDERSON: Mr. Brown, if I</p> <p>9 could just, the Direct Purchaser</p> <p>10 Plaintiffs, has your questioning</p> <p>11 concluded?</p> <p>12 MS. SMITH: Yes.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. If we could briefly, can you go</p> <p>15 back to what's marked as Catherman-6, this is</p> <p>16 MFI0322587.</p> <p>17 A. Okay.</p> <p>18 Q. If you take a look at the third</p> <p>19 paragraph, right about in the middle it says,</p> <p>20 "Instead, we have chosen to honor individual</p> <p>21 customer requests to supply eggs that meet</p> <p>22 the new UEP guidelines."</p> <p>23 Did I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. At this time, were you selling</p>	<p style="text-align: right;">Page 141</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 was equivalent to a UEP certified product but</p> <p>3 was not formally certified.</p> <p>4 Q. Customers that -- those</p> <p>5 customers that demanded or that requested UEP</p> <p>6 certified product, did those customers accept</p> <p>7 what you referred to as the equivalent?</p> <p>8 MS. ANDERSON: Object to the</p> <p>9 form of the question. Slightly</p> <p>10 misstates the document.</p> <p>11 THE WITNESS: I wouldn't have</p> <p>12 firsthand knowledge. I would assume</p> <p>13 that because I didn't run sales or</p> <p>14 have those direct conversations with</p> <p>15 those customers, but if our operations</p> <p>16 and sales would require us to have UEP</p> <p>17 equivalent product, that we would have</p> <p>18 it available and that we would have</p> <p>19 our internal control systems to make</p> <p>20 sure that that was the case.</p> <p>21 BY MR. BROWN:</p> <p>22 Q. I'm handing to you a document</p> <p>23 that will be marked as Catherman-16.</p> <p>24 - - -</p> <p>25 (Exhibit Catherman-16, 5/12/05)</p>

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<p style="text-align: right;">Page 142</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 E-mail, Bates MFI0039578 - MFI0039581,</p> <p>3 was marked for identification.)</p> <p>4 - - -</p> <p>5 BY MR. BROWN:</p> <p>6 Q. This is MFI0039578, and this is</p> <p>7 a May 12, 2005, e-mail that you sent. Is</p> <p>8 that correct?</p> <p>9 A. That's what's cited here.</p> <p>10 Q. I would like to direct you</p> <p>11 to --</p> <p>12 MS. ANDERSON: Just give the</p> <p>13 witness a minute to read the document.</p> <p>14 THE WITNESS: Yes, I'd like to</p> <p>15 read it. Thank you.</p> <p>16 [Reviewing document.] Okay.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. If you take a look at the page</p> <p>19 ending 579, on the top it says, "UEP Animal</p> <p>20 Welfare Committee Tuesday April 19, 2005."</p> <p>21 Then it says, "Discussion of alternative to</p> <p>22 Atlanta motions on ACC marketing by</p> <p>23 Non-Certified Producers/Marketers."</p> <p>24 Did I read that correctly?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 144</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 as Catherman-8. And this is MFI0006564.</p> <p>3 MS. ANDERSON: By "this," you</p> <p>4 mean Exhibit 8, Counsel?</p> <p>5 MR. BROWN: That is correct.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. And, again, this says, Before</p> <p>8 you decide to sue UEP or cancel membership I</p> <p>9 would formally like -- excuse me, I would</p> <p>10 like to formally meet with Michael's senior</p> <p>11 management. And that is an e-mail from Gene</p> <p>12 Gregory to you on March 21, 2005. Is that</p> <p>13 correct?</p> <p>14 A. Yes.</p> <p>15 Q. Does reviewing Catherman-16</p> <p>16 refresh your recollection as to whether or</p> <p>17 not you had discussed with Gene Gregory suing</p> <p>18 UEP?</p> <p>19 A. No.</p> <p>20 Q. You can put that one aside.</p> <p>21 Thank you.</p> <p>22 I'd like to direct your</p> <p>23 attention to Exhibit Catherman-9. This is</p> <p>24 MFI0330846.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">Page 143</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you understand what the</p> <p>3 reference to the Atlanta motions is?</p> <p>4 A. The Atlanta motions were, my</p> <p>5 understanding are cited directly below.</p> <p>6 Q. Okay. Do you recall when those</p> <p>7 motions were passed?</p> <p>8 MS. ANDERSON: Object to the</p> <p>9 form of the question. Lacks</p> <p>10 foundation.</p> <p>11 THE WITNESS: Being in April of</p> <p>12 this letter, I'm assuming, again, it</p> <p>13 would be in January of 2005 since</p> <p>14 that's when the UEP meetings held</p> <p>15 during the poultry conference which</p> <p>16 occurred every January in Atlanta.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Do you have any reason to think</p> <p>19 that that assumption is incorrect?</p> <p>20 A. No.</p> <p>21 Q. Okay. So -- let's see. This</p> <p>22 document is dated April 19, 2005. Correct?</p> <p>23 A. Yes. Correct.</p> <p>24 Q. Now, let me direct your</p> <p>25 attention back to what was previously marked</p>	<p style="text-align: right;">Page 145</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Do you recall where the idea</p> <p>3 for the UEP Sub-Committee on Egg Products</p> <p>4 Price Discovery came from?</p> <p>5 A. No, I do not.</p> <p>6 - - -</p> <p>7 (Exhibit Catherman-17, 4/13/04</p> <p>8 E-mail, Bates MFI0330137, was marked</p> <p>9 for identification.)</p> <p>10 - - -</p> <p>11 BY MR. BROWN:</p> <p>12 Q. I am handing you what is being</p> <p>13 marked Catherman-17. Please take a minute to</p> <p>14 review. And this is MFI0330137.</p> <p>15 A. Okay.</p> <p>16 Q. So the earliest e-mail on the</p> <p>17 chain is an e-mail from you April 13, 2004,</p> <p>18 to dbaker@cmfoods. Is that Dolph Baker?</p> <p>19 A. Yes.</p> <p>20 Q. And you copy Ken Klippen and Al</p> <p>21 Pope. Is that correct?</p> <p>22 A. Correct.</p> <p>23 Q. In the first paragraph of that</p> <p>24 e-mail you write, At past UEA meeting and in</p> <p>25 our Executive Committee calls, it was agreed</p>

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<p style="text-align: right;">Page 146</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 that we need to have a price discovery group</p> <p>3 focused only on the products markets.</p> <p>4 Did I read that correctly?</p> <p>5 A. Almost.</p> <p>6 Q. I'll try it one more time. "At</p> <p>7 the past UEA meeting and in our Executive</p> <p>8 Committee calls, it was agreed that we need</p> <p>9 to have a price discovery group focused only</p> <p>10 on the products markets."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Does that refresh your</p> <p>14 recollection as to where the idea for the UEP</p> <p>15 subcommittee came from?</p> <p>16 MS. ANDERSON: Object to the</p> <p>17 form of the question.</p> <p>18 THE WITNESS: It partially does</p> <p>19 in the point that it's saying here</p> <p>20 that it was obviously, as is cited</p> <p>21 here, came through discussions at UEA.</p> <p>22 Who, what, when is not -- I don't</p> <p>23 recall. It's not cited.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Did you have a position at UEA</p>	<p style="text-align: right;">Page 148</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Object to the</p> <p>3 form of the question. Are you</p> <p>4 referring back to a document when you</p> <p>5 say "here"?</p> <p>6 BY MR. BROWN:</p> <p>7 Q. I'll try that again. In</p> <p>8 Catherman-17, there is a discussion of the</p> <p>9 Egg Products Price Discovery subcommittee.</p> <p>10 Would this committee that's being proposed</p> <p>11 here facilitate the interest that you refer</p> <p>12 to?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question. I have no idea</p> <p>15 what you're asking him.</p> <p>16 THE WITNESS: I'm not sure what</p> <p>17 you're asking.</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Was there an interest on price</p> <p>20 discovery on egg products from UEA?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question. If you</p> <p>23 understand it, you can answer, Mr.</p> <p>24 Catherman.</p> <p>25 THE WITNESS: I believe that</p>
<p style="text-align: right;">Page 147</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 at this time?</p> <p>3 A. 2004, I believe I was chairman</p> <p>4 at that time.</p> <p>5 Q. As chairman -- well, withdrawn.</p> <p>6 Do you know what position Dolph</p> <p>7 Baker held at the time?</p> <p>8 A. No, I don't recall.</p> <p>9 Q. Was he involved in UEP?</p> <p>10 A. Yes.</p> <p>11 Q. At this time?</p> <p>12 A. Yes.</p> <p>13 Q. Why was the subcommittee to be</p> <p>14 focused only on the products markets?</p> <p>15 MS. ANDERSON: Object to the</p> <p>16 form of the question.</p> <p>17 THE WITNESS: It appears as if</p> <p>18 the interest of a price discovery on</p> <p>19 egg products came from UEA, that it is</p> <p>20 obvious that it would only be on egg</p> <p>21 products because the membership of UEA</p> <p>22 would only have interest in products.</p> <p>23 BY MR. BROWN:</p> <p>24 Q. And this committee that's being</p> <p>25 proposed here would facilitate that interest?</p>	<p style="text-align: right;">Page 149</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 there were members of UEA that had</p> <p>3 interest in price discovery on egg</p> <p>4 products. As cited before, UEA could</p> <p>5 not.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. And the interest that you just</p> <p>8 referred to, would this committee that's</p> <p>9 being proposed in Catherman-17 facilitate</p> <p>10 that interest?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: I think the</p> <p>14 working group that was being thought</p> <p>15 of could potentially approach those</p> <p>16 subjects.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. How could it approach those</p> <p>19 subjects?</p> <p>20 MS. ANDERSON: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: You want to define</p> <p>23 "subjects" or you want me to?</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Well, I'm referring to what you</p>

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<p style="text-align: right;">Page 150</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 said. You said that the working group could</p> <p>3 potentially approach those subjects. What</p> <p>4 did you mean when you said "subjects"?</p> <p>5 A. I'm mentally referring to a</p> <p>6 document you showed me earlier which was, I</p> <p>7 believe, the purpose or various other issues</p> <p>8 around this committee citing that it would</p> <p>9 look at transparency of markets, look at</p> <p>10 potential -- the Chicago Board of Trade</p> <p>11 references and various other things. So,</p> <p>12 yes, the concept was to have a working group</p> <p>13 that would approach that idea. Apparently it</p> <p>14 did meet and did come up with a strategy or a</p> <p>15 mission statement to at least start</p> <p>16 discussion.</p> <p>17 Q. And in doing those things that</p> <p>18 you just referred to, would this committee be</p> <p>19 facilitating an interest of UEA members?</p> <p>20 MS. ANDERSON: Object to the</p> <p>21 form of the question. Vague and</p> <p>22 ambiguous.</p> <p>23 THE WITNESS: Can you repeat the</p> <p>24 question again?</p> <p>25 MR. BROWN: Would you read it</p>	<p style="text-align: right;">Page 152</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 how one would define that. It</p> <p>3 depends. Again, it's an undefined</p> <p>4 question because there was -- nothing</p> <p>5 ever came out of the committee. So</p> <p>6 you could only surmise who would have</p> <p>7 any advantage or benefit from a result</p> <p>8 that did not occur.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Did you have particular members</p> <p>11 in mind when you said "Not all members"?</p> <p>12 MS. ANDERSON: Object to the</p> <p>13 form of the question. Vague and</p> <p>14 ambiguous.</p> <p>15 THE WITNESS: I don't recall.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. If you'll refer to Catherman-9,</p> <p>18 and this is MFI0330846, do you recall</p> <p>19 answering questions about this document</p> <p>20 earlier today?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall saying that you</p> <p>23 could not answer those questions without</p> <p>24 revealing the advise of counsel?</p> <p>25 MS. ANDERSON: I'm going to</p>
<p style="text-align: right;">Page 151</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 back?</p> <p>3 - - -</p> <p>4 (The court reporter read the</p> <p>5 pertinent part of the record.)</p> <p>6 - - -</p> <p>7 MS. ANDERSON: Same objection.</p> <p>8 THE WITNESS: It's actually</p> <p>9 advancing the interest of UEP members</p> <p>10 that also happen to be a member of</p> <p>11 UEA.</p> <p>12 BY MR. BROWN:</p> <p>13 Q. Would it also be advancing the</p> <p>14 interest of UEA members?</p> <p>15 MS. ANDERSON: Object to the</p> <p>16 form of the question. Asked and</p> <p>17 answered.</p> <p>18 THE WITNESS: Not all members.</p> <p>19 BY MR. BROWN:</p> <p>20 Q. Which members would it be</p> <p>21 advancing the interests of?</p> <p>22 MS. ANDERSON: Object to the</p> <p>23 form of the question. Vague and</p> <p>24 ambiguous.</p> <p>25 THE WITNESS: I'm not quite sure</p>	<p style="text-align: right;">Page 153</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 object to the form of the question.</p> <p>3 The transcript will reflect what his</p> <p>4 testimony was. If you have a new</p> <p>5 question, please ask it.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Without getting into the</p> <p>8 substance of anything that your attorneys</p> <p>9 said to you or any attorney said to you, does</p> <p>10 your understanding of this UEP</p> <p>11 subcommittee -- withdrawn.</p> <p>12 You state here in this</p> <p>13 document, "minor but of HUGE importance," and</p> <p>14 huge is in all caps.</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. What is your understanding of</p> <p>18 why that is "minor but of HUGE importance"?</p> <p>19 MR. DAVIS: I object to the</p> <p>20 extent that the question calls for</p> <p>21 privileged communications with UEP</p> <p>22 counsel.</p> <p>23 MS. ANDERSON: I'm going to</p> <p>24 instruct you not to answer to the</p> <p>25 extent you would have to reveal legal</p>

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<p style="text-align: right;">Page 154</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 advice provided to you by a lawyer.</p> <p>3 Otherwise, if you can answer the</p> <p>4 question without doing so, you may</p> <p>5 answer the question.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. Was the legal advice provided</p> <p>9 by UEP counsel?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question. Lacks</p> <p>12 foundation. That's not what he said.</p> <p>13 He said he could not answer the</p> <p>14 question.</p> <p>15 BY MR. BROWN:</p> <p>16 Q. Did you -- concerning this</p> <p>17 subject, "minor but of HUGE importance," did</p> <p>18 you receive advice from UEP counsel?</p> <p>19 MS. ANDERSON: I'm sorry, "minor</p> <p>20 but of HUGE importance" is the</p> <p>21 subject? Object to the form of the</p> <p>22 question. I don't understand your</p> <p>23 question.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Do you understand, sir?</p>	<p style="text-align: right;">Page 156</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Concerning this UEP</p> <p>4 Sub-Committee on Egg Products Price</p> <p>5 Discovery, did you receive any communications</p> <p>6 from Michael Foods' counsel?</p> <p>7 MS. ANDERSON: Same instruction,</p> <p>8 Mr. Catherman. You may answer it yes</p> <p>9 or no.</p> <p>10 THE WITNESS: No.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. I'm handing you what's being</p> <p>13 marked as Catherman-18.</p> <p>14 - - -</p> <p>15 (Exhibit Catherman-18, 6/8/04</p> <p>16 E-mail, Bates MFI0330857, was marked</p> <p>17 for identification.)</p> <p>18 - - -</p> <p>19 BY MR. BROWN:</p> <p>20 Q. Did you have a chance to</p> <p>21 review?</p> <p>22 A. Yes.</p> <p>23 Q. This is MFI0330857. This is an</p> <p>24 e-mail from you to Mr. Ken Klippen on June 8,</p> <p>25 2004. Is that correct?</p>
<p style="text-align: right;">Page 155</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. I'm going to respond to it this</p> <p>3 way --</p> <p>4 MR. DAVIS: I'm going to object</p> <p>5 to the extent that this calls for the</p> <p>6 witness to reveal any such</p> <p>7 communication from UEP counsel.</p> <p>8 BY MR. BROWN:</p> <p>9 Q. Were there any other</p> <p>10 communications from UEP counsel?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form of the question.</p> <p>13 THE WITNESS: About a phrase</p> <p>14 that says "minor but of HUGE</p> <p>15 importance," the answer is no. What's</p> <p>16 the question?</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Concerning this UEP</p> <p>19 Sub-Committee on Egg Products Price</p> <p>20 Discovery, did you receive any communications</p> <p>21 from UEP counsel?</p> <p>22 MS. ANDERSON: You may answer</p> <p>23 that question yes or no, Mr.</p> <p>24 Catherman.</p> <p>25 THE WITNESS: No.</p>	<p style="text-align: right;">Page 157</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. This is a forward of an earlier</p> <p>4 e-mail from Gene Gregory to you, and that</p> <p>5 earlier e-mail is dated also June 8, 2004.</p> <p>6 Is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. And Mr. Gregory writes to you,</p> <p>9 "While the meeting held in Chicago was a UEP</p> <p>10 Market Discovery Committee meeting, it was</p> <p>11 done so to benefit UEA members more so that</p> <p>12 the majority of UEP members."</p> <p>13 Did I read that correctly?</p> <p>14 A. I believe so.</p> <p>15 Q. Mr. Gregory continues, "Based</p> <p>16 upon this, do you think it is fair to charge</p> <p>17 the expenses of the meeting to UEA?"</p> <p>18 Did I read that correctly?</p> <p>19 A. I believe so.</p> <p>20 Q. Do you understand this to be a</p> <p>21 reference -- withdrawn.</p> <p>22 If you'll keep that in hand and</p> <p>23 go back to Catherman-9, please.</p> <p>24 MS. ANDERSON: You'd like him to</p> <p>25 keep Exhibit 18 in hand?</p>

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<p style="text-align: right;">Page 158</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MR. BROWN: Yes, please.</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MR. BROWN:</p> <p>5 Q. Do you understand Mr. Gregory,</p> <p>6 in Exhibit 18, to be referring to the meeting</p> <p>7 that is the subject of Exhibit Catherman-9?</p> <p>8 MR. DAVIS: Object to the form.</p> <p>9 THE WITNESS: It would appear</p> <p>10 so.</p> <p>11 BY MR. BROWN:</p> <p>12 Q. And you, after receiving that</p> <p>13 e-mail, you forwarded it to Mr. Klippen. Is</p> <p>14 that correct?</p> <p>15 A. I forwarded a question to Mr.</p> <p>16 Klippen, yes.</p> <p>17 Q. Including --</p> <p>18 A. Sorry.</p> <p>19 Q. You forwarded both Gene</p> <p>20 Gregory's message to you and then an</p> <p>21 additional question. Is that correct?</p> <p>22 A. I forwarded an additional</p> <p>23 question to Ken Klippen, yes.</p> <p>24 Q. Along with what Gene Gregory</p> <p>25 had sent. Correct?</p>	<p style="text-align: right;">Page 160</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 uncommon practice," what practice are you</p> <p>3 referring to?</p> <p>4 A. I was referring to UEP having</p> <p>5 expenditure that had benefit, yielding</p> <p>6 benefit to 100 percent of its members.</p> <p>7 Q. Was this an expenditure that</p> <p>8 yielded benefit to 100 percent of its</p> <p>9 members?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question. Vague and</p> <p>12 ambiguous.</p> <p>13 THE WITNESS: As we already</p> <p>14 mentioned, to the best of my</p> <p>15 knowledge, there was no benefit and no</p> <p>16 actual steps taken out of any of these</p> <p>17 discussions that were subject to this</p> <p>18 pricing discovery.</p> <p>19 BY MR. BROWN:</p> <p>20 Q. Did UEP's holding -- excuse me.</p> <p>21 Did UEP's holding meetings</p> <p>22 provide any benefits to its members?</p> <p>23 MS. ANDERSON: Object to the</p> <p>24 form of the question. It's totally</p> <p>25 vague and ambiguous.</p>
<p style="text-align: right;">Page 159</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And your question is, "What are</p> <p>4 your thoughts," and then three question</p> <p>5 marks. Is that correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do you recall discussing this</p> <p>8 with Mr. Klippen?</p> <p>9 A. I really don't. But it's ten</p> <p>10 years ago.</p> <p>11 Q. Mr. Gregory wrote to you, "It</p> <p>12 was done so to benefit UEA members more so</p> <p>13 that the majority of UEP members."</p> <p>14 Did you agree -- excuse me. Do</p> <p>15 you agree with that statement?</p> <p>16 A. Those are his words. It just</p> <p>17 so happened that this is a -- was a UEP</p> <p>18 function and that the discussion would</p> <p>19 benefit processors potentially which were UEP</p> <p>20 members. There are lots of different</p> <p>21 functions that UEP would do that would</p> <p>22 benefit one or two members and not all</p> <p>23 members. So this would not be an uncommon</p> <p>24 practice. I would hope not, at least.</p> <p>25 Q. So when you say, "not an</p>	<p style="text-align: right;">Page 161</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I don't really</p> <p>3 know what you mean by that. I mean</p> <p>4 every -- if a meeting is held without</p> <p>5 a benefit to somebody, fire that</p> <p>6 executive, please.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. So do you think this meeting</p> <p>9 was held without a benefit to somebody?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: I think it</p> <p>13 potentially could respond to some of</p> <p>14 the members' inquiries.</p> <p>15 BY MR. BROWN:</p> <p>16 Q. Which members are you referring</p> <p>17 to?</p> <p>18 MS. ANDERSON: Same objection.</p> <p>19 THE WITNESS: The members that</p> <p>20 asked and would participate in the</p> <p>21 discussion.</p> <p>22 BY MR. BROWN:</p> <p>23 Q. Do you have any in mind?</p> <p>24 MS. ANDERSON: Object to the</p> <p>25 form of the question.</p>

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<p style="text-align: right;">Page 162</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: No, I do not.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. I'm going to hand you what's</p> <p>5 being marked as Catherman-19.</p> <p>6 - - -</p> <p>7 (Exhibit Catherman-19, 7/16/04</p> <p>8 E-mail, Bates MFI0631434, was marked</p> <p>9 for identification.)</p> <p>10 - - -</p> <p>11 BY MR. BROWN:</p> <p>12 Q. This is MFI0631434. Please</p> <p>13 take a minute to review.</p> <p>14 A. I've read it.</p> <p>15 Q. The earliest e-mail on the</p> <p>16 chain is from Gene Gregory to Ken Klippen on</p> <p>17 July 16, 2004. Is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Mr. Gregory writes to Mr.</p> <p>20 Klippen, "Brann &amp; Isaacson has invoiced UEP</p> <p>21 \$5,237.64 for research on preparation and</p> <p>22 attending the meeting in Chicago for the</p> <p>23 purpose of market discovery for egg</p> <p>24 products."</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">Page 164</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 I believe it's the same.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. Does this refresh your</p> <p>5 recollection as to whether or not you</p> <p>6 received any communication from UEP counsel</p> <p>7 regarding the UEP Sub-Committee on Egg</p> <p>8 Products Price Discovery?</p> <p>9 A. No.</p> <p>10 Q. Do you recall receiving this</p> <p>11 e-mail?</p> <p>12 A. No.</p> <p>13 Q. Do you recall Brann &amp; Isaacson</p> <p>14 having any involvement with the Chicago</p> <p>15 meeting that's referred to in Catherman-19?</p> <p>16 MS. ANDERSON: You can answer</p> <p>17 that yes or no, Mr. Catherman.</p> <p>18 THE WITNESS: I can't say yes or</p> <p>19 no.</p> <p>20 MS. ANDERSON: Can you answer</p> <p>21 the question without revealing the</p> <p>22 advice of counsel?</p> <p>23 THE WITNESS: Are you asking</p> <p>24 me -- ask the question again.</p> <p>25 MS. ANDERSON: His question was</p>
<p style="text-align: right;">Page 163</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Not perfectly, close.</p> <p>3 Q. What did I miss?</p> <p>4 A. You said Mr. Klippen. It was</p> <p>5 addressed to only Catherman.</p> <p>6 Q. Sure. Thank you. Other than</p> <p>7 that, did I read it correctly?</p> <p>8 A. I believe.</p> <p>9 Q. Thank you. Mr. Gregory</p> <p>10 continues "While this was a UEP committee, it</p> <p>11 was for the purpose of the egg products</p> <p>12 industry. Therefore, should this not be a</p> <p>13 cost charged from UEP to UEA Further</p> <p>14 Processors."</p> <p>15 Did I read that correctly?</p> <p>16 A. I believe, yes.</p> <p>17 Q. Do you understand Mr. Gregory</p> <p>18 when he writes, "...the meeting in</p> <p>19 Chicago...," do you understand that to be a</p> <p>20 reference to the meeting that is discussed in</p> <p>21 Catherman-9?</p> <p>22 MS. ANDERSON: Object to the</p> <p>23 form of the question. Do you have</p> <p>24 Catherman-9 out, Mr. Catherman?</p> <p>25 THE WITNESS: Yes.</p>	<p style="text-align: right;">Page 165</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 whether you recall Brann &amp; Isaacson</p> <p>3 having any involvement with the</p> <p>4 meeting referred to in Catherman-19.</p> <p>5 THE WITNESS: Can my response</p> <p>6 be?</p> <p>7 MS. ANDERSON: You can answer</p> <p>8 the question if doing so will not</p> <p>9 reveal any advice from Brann &amp;</p> <p>10 Isaacson.</p> <p>11 THE WITNESS: Every UEA or UEP</p> <p>12 meeting I've ever attended had a</p> <p>13 counsel. If I attended this meeting,</p> <p>14 which the record would show that I</p> <p>15 did, I don't remember who counsel was</p> <p>16 at that meeting.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. When counsel attended UEA or</p> <p>19 UEP meetings, was that counsel Brann &amp;</p> <p>20 Isaacson?</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question. Vague and</p> <p>23 ambiguous. When?</p> <p>24 BY MR. BROWN:</p> <p>25 Q. Let me just clarify. You</p>

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<p style="text-align: right;">Page 166</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 recall that counsel attended every UEA</p> <p>3 meeting. Is that correct?</p> <p>4 MS. ANDERSON: I'm going to</p> <p>5 object to the form of the question</p> <p>6 because he's testified about six times</p> <p>7 that he doesn't recall this counsel</p> <p>8 being at this meeting. Which counsel?</p> <p>9 MR. BROWN: He just said every</p> <p>10 UEA or UEP meeting I attended had a</p> <p>11 counsel.</p> <p>12 MS. ANDERSON: What is the</p> <p>13 question?</p> <p>14 BY MR. BROWN:</p> <p>15 Q. I just wanted to confirm you</p> <p>16 recall that --</p> <p>17 MS. ANDERSON: You're asking him</p> <p>18 to repeat his testimony?</p> <p>19 MR. BROWN: I'm clarifying.</p> <p>20 MS. ANDERSON: Are you confused?</p> <p>21 BY MR. BROWN:</p> <p>22 Q. Do you have a specific</p> <p>23 recollection of that or are you just</p> <p>24 generally stating?</p> <p>25 MS. ANDERSON: Object to the</p>	<p style="text-align: right;">Page 168</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 this meeting -- well, withdrawn.</p> <p>3 Were there members that</p> <p>4 benefited from this meeting?</p> <p>5 MS. ANDERSON: Object to the</p> <p>6 form of the question. Vague and</p> <p>7 ambiguous.</p> <p>8 THE WITNESS: I already cited</p> <p>9 that no actionable steps were ever</p> <p>10 taken from any of these discussions so</p> <p>11 I believe there was no benefit.</p> <p>12 BY MR. BROWN:</p> <p>13 Q. Were there any UEP members that</p> <p>14 were members of PIDA?</p> <p>15 A. I have no idea.</p> <p>16 Q. Do you recall when Mr. Klippen</p> <p>17 began working as a consultant for Michael</p> <p>18 Foods?</p> <p>19 A. Not exactly. You're asking me</p> <p>20 about the date?</p> <p>21 Q. I was referring to the date,</p> <p>22 yes.</p> <p>23 A. No, I do not.</p> <p>24 Q. I'm handing you what's being</p> <p>25 marked Exhibit Catherman-20.</p>
<p style="text-align: right;">Page 167</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 form of the question.</p> <p>3 MR. BARNES: Object to the form.</p> <p>4 THE WITNESS: I've already made</p> <p>5 a statement that I do not remember,</p> <p>6 from my recall, that I've never</p> <p>7 attended a UEA or UEP meeting that did</p> <p>8 not have counsel representation.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Thank you.</p> <p>11 Now, in Exhibit Catherman-19</p> <p>12 Mr. Gregory writes, "While this was a UEP</p> <p>13 committee, it was for the purpose of the egg</p> <p>14 products industry."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Do you agree with that</p> <p>18 statement?</p> <p>19 A. I would not.</p> <p>20 Q. Why not?</p> <p>21 A. Because it was for the benefit</p> <p>22 of some of his members. If those members</p> <p>23 happened to be UEA members or they happen to</p> <p>24 be members of PIDA, so be it.</p> <p>25 Q. The members that benefited from</p>	<p style="text-align: right;">Page 169</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 (Exhibit Catherman-20, 12/23/05</p> <p>4 E-mail with attachment, Bates</p> <p>5 MFI0031571 - MFI0031576, was marked</p> <p>6 for identification.)</p> <p>7 - - -</p> <p>8 BY MR. BROWN:</p> <p>9 Q. This is MFI0031571. And feel</p> <p>10 free to review in its entirety, but I am just</p> <p>11 going to direct you to the first couple of</p> <p>12 sentences in an e-mail from Mr. Klippen.</p> <p>13 Please let me know when you are ready.</p> <p>14 A. [Reviewing document.] Okay.</p> <p>15 Q. The earliest e-mail in the</p> <p>16 chain is an e-mail from Mr. Klippen to Mr.</p> <p>17 Terry Baker. Is that correct?</p> <p>18 MS. ANDERSON: What page are you</p> <p>19 on, Counsel?</p> <p>20 BY MR. BROWN:</p> <p>21 Q. 31571. The first page.</p> <p>22 A. Yes.</p> <p>23 Q. On December -- excuse me.</p> <p>24 That e-mail from Mr. Klippen to</p> <p>25 Mr. Baker is dated December 22, 2005.</p>

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<p style="text-align: right;">Page 170</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Yes.</p> <p>3 Q. And there is the heading in</p> <p>4 that e-mail that says, "Klippen Representing</p> <p>5 Sparboe Summit Farms and Michael Foods, Inc."</p> <p>6 And it continues, "UEP's and UEA's former</p> <p>7 Vice President and Executive Director for</p> <p>8 Government Relations Ken Klippen is now</p> <p>9 officially representing Sparboe Summit Farms</p> <p>10 and Michael Foods, Inc. as a consultant</p> <p>11 working in Washington, DC."</p> <p>12 Did I read that correctly?</p> <p>13 A. I believe so.</p> <p>14 Q. Is this December 2005 around</p> <p>15 the time when Mr. Klippen began working as a</p> <p>16 consultant for Michael Foods?</p> <p>17 A. I don't recall.</p> <p>18 Q. Do you have any reason to think</p> <p>19 that this is incorrect?</p> <p>20 A. No, I do not.</p> <p>21 MS. ANDERSON: Object to the</p> <p>22 form of the question.</p> <p>23 BY MR. BROWN:</p> <p>24 Q. Do you recall when -- well,</p> <p>25 withdrawn.</p>	<p style="text-align: right;">Page 172</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 some issues and decided to part.</p> <p>3 Q. As a consultant for Michael</p> <p>4 Foods, what type of work did Mr. Klippen do?</p> <p>5 A. We asked him to -- I believe he</p> <p>6 was directed to work with our effort on</p> <p>7 government relations in Washington, D.C.</p> <p>8 Q. Was that the full scope of the</p> <p>9 work that he did?</p> <p>10 MS. ANDERSON: Object to the</p> <p>11 form of the question.</p> <p>12 THE WITNESS: When?</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Well, let's say from 2005</p> <p>15 approximately to any time up to 2008.</p> <p>16 MS. ANDERSON: Object to the</p> <p>17 form of the question. Lacks</p> <p>18 foundation.</p> <p>19 THE WITNESS: He also worked</p> <p>20 with us developing an Animal Welfare</p> <p>21 Program which eventually he took on to</p> <p>22 his own corporate entity working with</p> <p>23 several other companies in the</p> <p>24 industry.</p> <p>25 BY MR. BROWN:</p>
<p style="text-align: right;">Page 171</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Do you know whether Mr. Klippen</p> <p>3 ever worked for UEP?</p> <p>4 A. I've already stated to that</p> <p>5 earlier today, yes, he did.</p> <p>6 Q. Do you know when he stopped</p> <p>7 working for -- well, withdrawn.</p> <p>8 Do you when Mr. Klippen stopped</p> <p>9 working for UEP?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you know that he did stop</p> <p>12 working for UEP?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Do you have an understanding of</p> <p>15 the circumstances in which Mr. Klippen</p> <p>16 stopped working for UEP?</p> <p>17 MR. DAVIS: Objection. Vague</p> <p>18 and ambiguous. Calls for speculation.</p> <p>19 Lack of foundation.</p> <p>20 THE WITNESS: It would be a</p> <p>21 vague memory.</p> <p>22 BY MR. BROWN:</p> <p>23 Q. What is your vague memory of</p> <p>24 that?</p> <p>25 A. That he and Gene Gregory had</p>	<p style="text-align: right;">Page 173</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did he provide any other</p> <p>3 services to Michael Foods as a consultant?</p> <p>4 A. I wouldn't be aware of all of</p> <p>5 his functions with us. I do not know.</p> <p>6 Q. I'm going to hand you what will</p> <p>7 be marked as Exhibit Catherman-21.</p> <p>8 - - -</p> <p>9 (Exhibit Catherman-21, E-mail</p> <p>10 chain, Bates MFI0617596 &amp; MFI0617597,</p> <p>11 was marked for identification.)</p> <p>12 - - -</p> <p>13 BY MR. BROWN:</p> <p>14 Q. Please take a minute to review.</p> <p>15 This is MFI0617596.</p> <p>16 A. [Reviewing document.] Okay.</p> <p>17 Q. The latest e-mail in the chain</p> <p>18 on Exhibit 21 is an e-mail from you to Vince</p> <p>19 O'Brien, Tim Bebee, Terry Baker and Lowell</p> <p>20 Ostrand. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And this is -- that e-mail</p> <p>23 is -- excuse me, the latest e-mail in the</p> <p>24 chain is dated October 6, 2006. Is that</p> <p>25 correct?</p>

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<p style="text-align: right;">Page 174</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. Correct.</p> <p>3 Q. And in that latest e-mail you</p> <p>4 are forwarding a communication from Ken</p> <p>5 Klippen. Is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Will you identify for me the</p> <p>8 recipients of the Klippen e-mail?</p> <p>9 MS. ANDERSON: The e-mail he is</p> <p>10 forwarding, Counsel?</p> <p>11 MR. BROWN: Yes.</p> <p>12 THE WITNESS: He is forwarding</p> <p>13 the e-mail, or he is sending an e-mail</p> <p>14 to Dana Persson who was Golden Oval.</p> <p>15 J. Dean is at -- Jim Dean at Center</p> <p>16 Fresh. Blair Van Zetten at Oskaloosa</p> <p>17 Foods. Jerry Warntjes at Echo Lake</p> <p>18 Foods. Myself. Terry Baker. Elliot</p> <p>19 Gibber, E. Gibber at Deb-El Foods. J.</p> <p>20 Luikart, I can't remember J's first</p> <p>21 name at Primera. Norm Stocker at</p> <p>22 Cargill. And I'm not sure who the</p> <p>23 intent would be at Sonstegard for the</p> <p>24 eggs@Sonstegard. K. Brodhagen would</p> <p>25 be Kathy Brodhagen at Abbotsford Egg.</p>	<p style="text-align: right;">Page 176</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Did I read that correctly?</p> <p>3 A. I believe so.</p> <p>4 Q. Does that refresh your</p> <p>5 recollection as to what vote Mr. Klippen is</p> <p>6 referring to?</p> <p>7 A. Not really.</p> <p>8 Q. If you'll do me a favor and</p> <p>9 keep that in hand.</p> <p>10 MS. ANDERSON: "That" being</p> <p>11 Exhibit 21?</p> <p>12 MR. BROWN: Correct.</p> <p>13 BY MR. BROWN:</p> <p>14 Q. I'm going to hand to you what</p> <p>15 is going to be marked as Exhibit</p> <p>16 Catherman-22.</p> <p>17 - - -</p> <p>18 (Exhibit Catherman-22, 10/5/06</p> <p>19 E-mail with attachment, Bates</p> <p>20 MFI0616647 - MFI0616653, was marked</p> <p>21 for identification.)</p> <p>22 - - -</p> <p>23 BY MR. BROWN:</p> <p>24 Q. This is MFI0616647. Feel free</p> <p>25 to --</p>
<p style="text-align: right;">Page 175</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Dean Hughson I believe at the time was</p> <p>3 at Rembrandt. Dave Rettig, Rembrandt.</p> <p>4 And the William would have been</p> <p>5 William Rehm at Daybreak Foods.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Mr. Klippen writes, "All:</p> <p>8 Before the vote is cast on changes to the</p> <p>9 UEP-certified program this week, please</p> <p>10 consider the thoughts in this white paper</p> <p>11 analysis."</p> <p>12 Did I read that correctly?</p> <p>13 A. I believe so.</p> <p>14 Q. Do you have an understanding of</p> <p>15 what vote Mr. Klippen was referring to?</p> <p>16 A. Not exactly.</p> <p>17 Q. Well, if you take a look down</p> <p>18 to the bottom of this page, there is a</p> <p>19 bolded, the word "Phase-in."</p> <p>20 A. Okay.</p> <p>21 Q. This says, "The concept of</p> <p>22 phasing in a purchase requirement for</p> <p>23 non-certified producers/breakers over the</p> <p>24 next six years will be placed on the table in</p> <p>25 San Antonio, Texas on October 10th."</p>	<p style="text-align: right;">Page 177</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: Counsel, is this</p> <p>3 one document?</p> <p>4 MR. BROWN: It is an e-mail with</p> <p>5 an attachment.</p> <p>6 MS. ANDERSON: But is this all</p> <p>7 one document?</p> <p>8 MR. BROWN: It was produced all</p> <p>9 as --</p> <p>10 MS. ANDERSON: It was produced</p> <p>11 as one?</p> <p>12 MR. BROWN: Yes.</p> <p>13 MS. ANDERSON: The Bates range</p> <p>14 for those on the phone is MFI0616653.</p> <p>15 BY MR. BROWN:</p> <p>16 Q. Now, feel free to review it to</p> <p>17 the extent that you would like, although I'm</p> <p>18 really just showing it to you to try to</p> <p>19 refresh your recollection about a particular</p> <p>20 motion.</p> <p>21 A. I would like to read it all,</p> <p>22 but I do recall now that there was pending</p> <p>23 discussion to limit, if not prohibit the</p> <p>24 marketing of cage -- excuse me, of certified</p> <p>25 product.</p>

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<p style="text-align: right;">Page 178</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Okay. Now, will you refer to</p> <p>3 Exhibit Catherman-21? Do you understand that</p> <p>4 to be the vote that Mr. Klippen is</p> <p>5 discussing?</p> <p>6 MS. ANDERSON: I'm sorry, can</p> <p>7 you rephrase that?</p> <p>8 BY MR. BROWN:</p> <p>9 Q. Your recollection was refreshed</p> <p>10 about -- well, why don't we just go through</p> <p>11 the document.</p> <p>12 A. Then I'll need to read it.</p> <p>13 Q. Well, okay. You have an</p> <p>14 understanding that there was a motion being</p> <p>15 talked about at this time. Correct?</p> <p>16 MS. ANDERSON: Objection. Vague</p> <p>17 and ambiguous. Are you talking about</p> <p>18 this time being October 6, 2006, in</p> <p>19 Exhibit 21?</p> <p>20 MR. BROWN: Yes.</p> <p>21 THE WITNESS: By looking at the</p> <p>22 Exhibit Number 22, being October 5th,</p> <p>23 I would surmise that if we're talking</p> <p>24 about a forthcoming meeting and a</p> <p>25 potential motion, and a letter dated a</p>	<p style="text-align: right;">Page 180</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 form of the question.</p> <p>3 THE WITNESS: Potentially, but I</p> <p>4 don't recall a discussion of requiring</p> <p>5 a phase in of purchases by</p> <p>6 non-certified producers.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. I think maybe we should go back</p> <p>9 to Exhibit 22, please. And, please, take</p> <p>10 your time reviewing it.</p> <p>11 A. [Reviewing document.] Okay.</p> <p>12 Q. Okay. The first page of that</p> <p>13 document -- well, backing up. That's an</p> <p>14 e-mail from you to Mr. Terry Baker, Mr. Vince</p> <p>15 O'Brien, copying Mr. Tim Bebee, dated</p> <p>16 October 5, 2006. Is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. You write, "In advance of next</p> <p>19 week's UEP annual meetings, I spoke to Gene</p> <p>20 Gregory about the possible motion being</p> <p>21 advanced in the Welfare Committee to prohibit</p> <p>22 marketing of non-certified eggs."</p> <p>23 MR. BARNES: What are you</p> <p>24 reading from, Counsel, 22?</p> <p>25 MR. BROWN: 22, that's correct,</p>
<p style="text-align: right;">Page 179</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 day later that addresses a potential</p> <p>3 vote, yes, I would assume that they're</p> <p>4 one and the same.</p> <p>5 BY MR. BROWN:</p> <p>6 Q. If we go -- if you'll go back</p> <p>7 to Exhibit 21, please. Mr. Klippen in the</p> <p>8 e-mail -- excuse me. At the very top of his</p> <p>9 e-mail he writes, "Before the vote is cast on</p> <p>10 changes to the UEP-certified program this</p> <p>11 week..."</p> <p>12 Did I read that correctly?</p> <p>13 A. Yes.</p> <p>14 Q. And the changes, what is your</p> <p>15 understanding of the changes that he was</p> <p>16 referring to?</p> <p>17 A. I don't recall.</p> <p>18 Q. In this paragraph with the</p> <p>19 heading "Phase-in" at the bottom of the</p> <p>20 e-mail, he talks about "The concept of</p> <p>21 phasing in a purchase requirement for</p> <p>22 non-certified producers/breakers over the</p> <p>23 next six years..." Would that have been a</p> <p>24 change to the UEP program?</p> <p>25 MS. ANDERSON: Object to the</p>	<p style="text-align: right;">Page 181</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 the first page of the document. It's</p> <p>3 the first sentence under the word</p> <p>4 "Attachment" which is in bold.</p> <p>5 MR. BARNES: Okay. Thank you.</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Are you with me, sir?</p> <p>8 A. Yes.</p> <p>9 MS. ANDERSON: Is there a</p> <p>10 question about what you just read?</p> <p>11 BY MR. BROWN:</p> <p>12 Q. Did I read that correctly?</p> <p>13 A. I believe so.</p> <p>14 Q. I will direct your attention to</p> <p>15 the page that ends 6650.</p> <p>16 A. Okay.</p> <p>17 Q. And there's a heading on this</p> <p>18 page that says, "MOTION." Is it your</p> <p>19 understanding that this motion that is</p> <p>20 referred to on the page ending 6650 is the</p> <p>21 motion that you were referring to on the</p> <p>22 first page of this document in your e-mail?</p> <p>23 MS. ANDERSON: Object to the</p> <p>24 form of the question.</p> <p>25 THE WITNESS: I would say yes.</p>

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<p style="text-align: right;">Page 182</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Were you in favor of that</p> <p>4 motion?</p> <p>5 A. You're asking my personal</p> <p>6 opinion, no, I was not.</p> <p>7 Q. In your e-mail, still on</p> <p>8 Exhibit 22, the first page, there's a</p> <p>9 statement from you, "He....," I believe this</p> <p>10 refers to Gene Gregory, "stated that in his</p> <p>11 opinion, this is a direct attack towards</p> <p>12 Michael Foods by Rose Acres and thus a</p> <p>13 competitive issue and activity, not an</p> <p>14 improvement to the welfare guidelines."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes, you did.</p> <p>17 Q. Do you agree with that</p> <p>18 statement?</p> <p>19 MR. BARNES: Object to the form.</p> <p>20 THE WITNESS: Well, the</p> <p>21 statement I'm making there is a recap</p> <p>22 of my thought of what I had heard from</p> <p>23 a he, he being most likely Gene</p> <p>24 Gregory. So it's not whether I agree</p> <p>25 or not, it's whether or not what he</p>	<p style="text-align: right;">Page 184</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MR. BROWN: That's correct.</p> <p>3 THE WITNESS: I don't recall.</p> <p>4 In fact, when I started looking at</p> <p>5 them, under his phase-in process, he</p> <p>6 doesn't even mention about the</p> <p>7 purchase requirement being a condition</p> <p>8 of certified membership. So that's my</p> <p>9 response before where I didn't</p> <p>10 remember that discussion about a</p> <p>11 purchase requirement as part of</p> <p>12 membership into the certified program,</p> <p>13 whereas, the motion and discussion in</p> <p>14 the other documents, it was</p> <p>15 potentially a requirement for</p> <p>16 participation in the program. A</p> <p>17 slight clarification.</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Do you understand that a</p> <p>20 purchase requirement was being proposed as a</p> <p>21 change to the UEP Certified Program at this</p> <p>22 time?</p> <p>23 MS. ANDERSON: Object to the</p> <p>24 form of the question. Lacks</p> <p>25 foundation.</p>
<p style="text-align: right;">Page 183</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 was referring to or stating.</p> <p>3 BY MR. BROWN:</p> <p>4 Q. In your personal opinion, you</p> <p>5 were not in favor of this motion. Correct?</p> <p>6 A. Correct. Already stated.</p> <p>7 Q. Thank you.</p> <p>8 We can move just quickly to</p> <p>9 Exhibit 21 again.</p> <p>10 A. Okay.</p> <p>11 Q. Is it your understanding that</p> <p>12 in this e-mail Mr. Klippen is discussing the</p> <p>13 motion that we just looked at that is in</p> <p>14 Exhibit 22?</p> <p>15 MS. ANDERSON: Object to the</p> <p>16 form of the question. Are you</p> <p>17 referring to the e-mail from</p> <p>18 Mr. Klippen?</p> <p>19 THE WITNESS: I don't recall.</p> <p>20 MS. ANDERSON: Hold on one</p> <p>21 second, Mr. Catherman. Are you</p> <p>22 referring to the e-mail from Mr.</p> <p>23 Klippen to the long series of</p> <p>24 individuals which is the second e-mail</p> <p>25 in Exhibit 21?</p>	<p style="text-align: right;">Page 185</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 THE WITNESS: I recall by</p> <p>3 looking at this document that there</p> <p>4 was a UEP member who was promoting</p> <p>5 that concept.</p> <p>6 MS. ANDERSON: And the record</p> <p>7 should reflect that Mr. Catherman is</p> <p>8 looking at Exhibit 22.</p> <p>9 BY MR. BROWN:</p> <p>10 Q. Exhibit 21, sir. Now, you</p> <p>11 write "...we had Ken send it..." -- well,</p> <p>12 let me back up.</p> <p>13 In the latest e-mail to the</p> <p>14 chain from you dated October 6, 2006, you</p> <p>15 write, "...we had Ken send it to the</p> <p>16 following."</p> <p>17 Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. When you say, "...send it to</p> <p>20 the following," were you referring to the</p> <p>21 addressees on Mr. Klippen's e-mail that is</p> <p>22 the e-mail that you forwarded?</p> <p>23 A. I believe so.</p> <p>24 Q. What did you mean when you</p> <p>25 said, "...we had Ken send it to the</p>

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<p style="text-align: right;">Page 186</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 following"?</p> <p>3 A. We as a representative of the</p> <p>4 working group that was a verified process of</p> <p>5 which he was working for us, I believe, at</p> <p>6 this time. So as he created the document, it</p> <p>7 was obviously working to the Guidance</p> <p>8 Committee, and that group made sure that any</p> <p>9 art of work that he was creating was sent to</p> <p>10 all of its memberships.</p> <p>11 Q. Did you request that</p> <p>12 Mr. Klippen send it to the addressees?</p> <p>13 A. Did I request? I do not recall</p> <p>14 that I requested it.</p> <p>15 Q. Okay. You then write in the</p> <p>16 latest e-mail in the chain, "I did ok him to</p> <p>17 send it to Sparboe group under a separate</p> <p>18 cover to keep them in the loop."</p> <p>19 Did I read that correctly?</p> <p>20 A. I believe so.</p> <p>21 Q. Did you request that</p> <p>22 Mr. Klippen send this to -- withdrawn.</p> <p>23 Did you request that</p> <p>24 Mr. Klippen send this white paper analysis to</p> <p>25 the Sparboe group?</p>	<p style="text-align: right;">Page 188</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 to Sparboe?</p> <p>3 MS. ANDERSON: Same objection.</p> <p>4 THE WITNESS: As I cited before,</p> <p>5 the e-mail says -- I don't recall the</p> <p>6 direct conversations, that I did okay</p> <p>7 him to send it, in quotes.</p> <p>8 MR. BROWN:</p> <p>9 Q. Would you have okayed</p> <p>10 Mr. Klippen to send this to the Sparboe group</p> <p>11 if you thought it was inaccurate?</p> <p>12 MS. ANDERSON: Object to the</p> <p>13 form of the question. Calls for</p> <p>14 speculation testimony about a document</p> <p>15 that he's already told you he doesn't</p> <p>16 recall.</p> <p>17 THE WITNESS: Most likely not.</p> <p>18 At the same point, I do not recall</p> <p>19 ever editing any document Mr. Klippen</p> <p>20 ever produced except for the detail of</p> <p>21 the PVP process documents.</p> <p>22 MS. ANDERSON: Can we take a</p> <p>23 break when convenient, Mr. Brown?</p> <p>24 MR. BROWN: Just ten minutes,</p> <p>25 sir, if that's okay with everyone.</p>
<p style="text-align: right;">Page 187</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. I don't recall. And this does</p> <p>3 not say that I requested it.</p> <p>4 Q. Did you okay him to send it to</p> <p>5 the Sparboe group?</p> <p>6 A. That's what it's citing in the</p> <p>7 e-mail.</p> <p>8 Q. What does okay mean in this</p> <p>9 context?</p> <p>10 A. Looking at the e-mail and the</p> <p>11 context of the document, my assumption would</p> <p>12 be that Mr. Sparboe, Mr. Klippen asked me</p> <p>13 whether or not he could forward it to</p> <p>14 Sparboe, and that I thought it was not an</p> <p>15 issue.</p> <p>16 Q. So you believe that you</p> <p>17 approved -- do you believe that you approved</p> <p>18 Mr. Klippen sending this, forwarding this to</p> <p>19 Sparboe?</p> <p>20 MS. ANDERSON: Object to the</p> <p>21 form of the question.</p> <p>22 THE WITNESS: No, I wouldn't use</p> <p>23 those words.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. But you did okay him to send it</p>	<p style="text-align: right;">Page 189</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. BROWN:</p> <p>3 Q. Would you have reviewed this</p> <p>4 prior to okaying Mr. Klippen -- when I say</p> <p>5 "this," I'm referring to the white paper</p> <p>6 analysis in Exhibit 21. Would you have</p> <p>7 reviewed this prior to okaying Mr. Klippen</p> <p>8 sending it to the Sparboe group?</p> <p>9 MS. ANDERSON: Object to the</p> <p>10 form of the question.</p> <p>11 THE WITNESS: I don't recall.</p> <p>12 BY MR. BROWN:</p> <p>13 Q. Okay. If we take a look at the</p> <p>14 body of the e-mail.</p> <p>15 MS. ANDERSON: Exhibit 21?</p> <p>16 MR. BROWN: That's correct,</p> <p>17 still Exhibit 21.</p> <p>18 BY MR. BROWN:</p> <p>19 Q. Do you see the heading "What</p> <p>20 has evolved" which is in bold?</p> <p>21 A. Yes.</p> <p>22 Q. The second sentence, "The UEP</p> <p>23 Animal Welfare Committee sought 100%</p> <p>24 compliance by any participants under the</p> <p>25 pretense this would signal a higher degree of</p>

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<p style="text-align: right;">Page 190</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 'welfare' and it was....," quote -- excuse me,</p> <p>3 "...and it was the 'right thing to do.'"</p> <p>4 Did I read that correctly?</p> <p>5 MS. ANDERSON: I think you</p> <p>6 inserted some words there, but the</p> <p>7 document can speak for itself.</p> <p>8 THE WITNESS: Yes. I guess I'll</p> <p>9 make a comment, I'm not quite sure why</p> <p>10 I'm having to verify every time you</p> <p>11 read something.</p> <p>12 MR. BARNES: It's a reading</p> <p>13 test.</p> <p>14 THE WITNESS: It's a reading</p> <p>15 test for you, it's a little bit</p> <p>16 insulting of my intelligence at times.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. Thank you.</p> <p>19 Sir, I apologize if it comes</p> <p>20 across that way. It's really not my intent.</p> <p>21 A. I've had it all day, so...</p> <p>22 Q. Very quickly, the last sentence</p> <p>23 in that paragraph, "The Certified Program</p> <p>24 evolved into a marketing structure dictating</p> <p>25 how and to whom UEP members marketed their</p>	<p style="text-align: right;">Page 192</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 (Exhibit Catherman-23, 1/29/03</p> <p>3 E-mail, Bates MFI0118191 - MFI0118193,</p> <p>4 was marked for identification.)</p> <p>5 - - -</p> <p>6 BY MR. BROWN:</p> <p>7 Q. Please take a minute to review.</p> <p>8 This is MFI0118191.</p> <p>9 A. Okay.</p> <p>10 Q. This is an e-mail from Don Bell</p> <p>11 to you, January 29, 2003. Is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. Subject, "Urner Barry market</p> <p>14 reaction to new layer house construction."</p> <p>15 Correct?</p> <p>16 A. Correct.</p> <p>17 Q. Mr. Bell writes, "Toby, Your</p> <p>18 questions, as stated, are a little</p> <p>19 confusing."</p> <p>20 Do you understand Mr. Bell to</p> <p>21 be referring to the text that's on the next</p> <p>22 page of this document ending 8192?</p> <p>23 A. Yes.</p> <p>24 Q. And that text that's on --</p> <p>25 well, let me just -- if you'll bear with me,</p>
<p style="text-align: right;">Page 191</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 product."</p> <p>3 Did I read that correctly?</p> <p>4 A. I believe so.</p> <p>5 Q. Thank you.</p> <p>6 MR. BROWN: Can we go off the</p> <p>7 record and take a break, please?</p> <p>8 VIDEOGRAPHER: This ends disc</p> <p>9 number four of the Catherman</p> <p>10 deposition. The time is 2:27:47. Off</p> <p>11 the record.</p> <p>12 - - -</p> <p>13 (A recess was taken.)</p> <p>14 - - -</p> <p>15 VIDEOGRAPHER: On the record</p> <p>16 with disc number five of the testimony</p> <p>17 of Toby Catherman in the matter of</p> <p>18 Processed Egg Products. The date is</p> <p>19 March 18, 2014. The time is 2:39:59.</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Good afternoon, Mr. Catherman.</p> <p>22 A. Yes.</p> <p>23 Q. I'm going to hand you what will</p> <p>24 be marked as Catherman-23.</p> <p>25 - - -</p>	<p style="text-align: right;">Page 193</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 I'm going to read it for you. Quote, what</p> <p>3 would be the --</p> <p>4 MS. ANDERSON: Where are you,</p> <p>5 Counsel?</p> <p>6 MR. BROWN: On page 8192. It's</p> <p>7 about three-fourths down the page.</p> <p>8 BY MR. BROWN:</p> <p>9 Q. "What would be the 'market rule</p> <p>10 of thumb' of market impact if starting in</p> <p>11 late 2003, an additional 5 to 10 million</p> <p>12 layer house construction would begin for</p> <p>13 in-line breaking in an even housing pattern</p> <p>14 over two to three years."</p> <p>15 Did I read that correctly?</p> <p>16 A. I believe so.</p> <p>17 Q. And it's your understanding</p> <p>18 that that -- that the passage I just read is</p> <p>19 what Mr. Bell is referring to on the previous</p> <p>20 page, 8191, when he discusses your questions?</p> <p>21 A. Yes.</p> <p>22 MS. ANDERSON: Object to the</p> <p>23 form of the question.</p> <p>24 BY MR. BROWN:</p> <p>25 Q. And if you'll go, the third</p>

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<p style="text-align: right;">Page 194</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 paragraph from the bottom on 8191, the last</p> <p>3 sentence. Do you see that, it starts with</p> <p>4 "Question"?</p> <p>5 A. Okay.</p> <p>6 Q. "Question: wouldn't it make</p> <p>7 more sense to buy your needs from existing</p> <p>8 production than to add to the nation's</p> <p>9 surplus production?"</p> <p>10 Did I read that correctly?</p> <p>11 A. I believe so.</p> <p>12 Q. You can set that one aside.</p> <p>13 I'm handing you what will be</p> <p>14 marked Catherman-24.</p> <p>15 - - -</p> <p>16 (Exhibit Catherman-24, 4/13/04</p> <p>17 E-mail, Bates MFI0330138, was marked</p> <p>18 for identification.)</p> <p>19 - - -</p> <p>20 BY MR. BROWN:</p> <p>21 Q. Please take a minute to review.</p> <p>22 A. [Reviewing document.] Okay.</p> <p>23 Q. This is MFI0330138. This is an</p> <p>24 e-mail from you April 13, 2004, to several</p> <p>25 individuals. Will you identify who those</p>	<p style="text-align: right;">Page 196</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. You can set that one aside.</p> <p>3 I'm handing you what's being</p> <p>4 marked as Catherman-25.</p> <p>5 - - -</p> <p>6 (Exhibit Catherman-25, 4/13/07</p> <p>7 E-mail, Bates MFI0097273, was marked</p> <p>8 for identification.)</p> <p>9 - - -</p> <p>10 BY MR. BROWN:</p> <p>11 Q. This is MFI0097273. Please</p> <p>12 take a minute to review.</p> <p>13 A. Okay.</p> <p>14 Q. The latest e-mail in the chain</p> <p>15 is an e-mail from you April 13, 2007, to Mr.</p> <p>16 Baker, Mr. Lowell Ostrand and Mr. Tim Bebee.</p> <p>17 Is that correct?</p> <p>18 A. Correct.</p> <p>19 Q. You're forwarding an e-mail</p> <p>20 with the subject line "CONFIDENTIAL" that you</p> <p>21 received from Mr. Ken Klippen. Correct?</p> <p>22 A. Correct.</p> <p>23 Q. And Mr. Klippen writes, "The</p> <p>24 official letter..." -- excuse me, Mr. Klippen</p> <p>25 writes, "UEP's efforts to stop USDA from</p>
<p style="text-align: right;">Page 195</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 individuals are, please?</p> <p>3 A. I believe the first one is</p> <p>4 Roger Deffner at National Food. The second</p> <p>5 one is, I think his first name is Mike Bynum</p> <p>6 at Tampa Farms. Dolph Baker Cal-Maine. Mr.</p> <p>7 West, I can't remember his first name, of JS</p> <p>8 West. Bob at Midwest Poultry. Joe Fortin.</p> <p>9 Jim Dean at Center Fresh. The next one I</p> <p>10 don't know who that is, don't remember. The</p> <p>11 last one would be Wayne Mooney at Pilgrim's</p> <p>12 Pride.</p> <p>13 Q. Do you recall why you wrote</p> <p>14 this to those individuals in particular?</p> <p>15 A. Reading the letter, it</p> <p>16 apparently is my invitation as chair of UEA</p> <p>17 inviting them to attend a UEA meeting with</p> <p>18 the intent to strengthen their understanding</p> <p>19 of UEA.</p> <p>20 Q. And is it correct that you</p> <p>21 wrote that the UEA Executive Committee and</p> <p>22 you intend to greatly increase the exchange</p> <p>23 of information between the UEA membership and</p> <p>24 UEP?</p> <p>25 A. That's what's cited here, yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 accepting the Verified Program were turned</p> <p>3 down by USDA. The official letter is being</p> <p>4 sent today. The meeting that took place was</p> <p>5 termed 'ugly' followed by the message that</p> <p>6 the egg guys would do what they have to do</p> <p>7 (which means Capitol Hill)."</p> <p>8 Did I read that correctly?</p> <p>9 A. I believe so.</p> <p>10 Q. Do you recall discussions with</p> <p>11 Mr. Klippen about the meeting that he's</p> <p>12 referring to?</p> <p>13 MS. ANDERSON: Object to the</p> <p>14 form of the question.</p> <p>15 THE WITNESS: Vaguely after</p> <p>16 reading this.</p> <p>17 BY MR. BROWN:</p> <p>18 Q. And what is your vague</p> <p>19 recollection of it?</p> <p>20 A. That there was a meeting and</p> <p>21 that UEP was speaking to USDA about the</p> <p>22 potential verified program that we were</p> <p>23 working on.</p> <p>24 Q. Was UEP making efforts to stop</p> <p>25 USDA from accepting the verified program?</p>

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<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 A. I wasn't in the meeting.</p> <p>3 MR. DAVIS: Objection. Lacks</p> <p>4 foundation.</p> <p>5 THE WITNESS: I wasn't in the</p> <p>6 meeting, I don't know.</p> <p>7 BY MR. BROWN:</p> <p>8 Q. Do you have an understanding of</p> <p>9 what Mr. Klippen meant when he used the term</p> <p>10 "ugly" to refer to that meeting?</p> <p>11 MS. ANDERSON: Object to the</p> <p>12 form of the question. Calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: Not really because</p> <p>15 I wasn't there.</p> <p>16 BY MR. BROWN:</p> <p>17 Q. Did you subsequently discuss</p> <p>18 the meeting with Mr. Klippen?</p> <p>19 A. The meeting that UEP had with</p> <p>20 USDA?</p> <p>21 Q. Yes.</p> <p>22 A. I believe I did.</p> <p>23 Q. What is your recollection of</p> <p>24 that discussion with Mr. Klippen regarding</p> <p>25 this meeting that's referred to in Exhibit</p>	<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 - - -</p> <p>3 EXAMINATION</p> <p>4 - - -</p> <p>5 BY MR. ESSENMACHER:</p> <p>6 Q. Okay. Keith Essenmacher. I</p> <p>7 represent the Indirect Purchaser Plaintiffs.</p> <p>8 Good afternoon, Mr. Catherman.</p> <p>9 A. Good afternoon.</p> <p>10 Q. I know it's been a long day, so</p> <p>11 I'm going to kind of keep this brief and get</p> <p>12 right to the point.</p> <p>13 Did you or did you direct</p> <p>14 anyone to the conduct a survey or study on</p> <p>15 street pricing, also known as retailing</p> <p>16 pricing, of shell eggs?</p> <p>17 MS. SMITH: Objection.</p> <p>18 MS. ANDERSON: Object to the</p> <p>19 form of the question.</p> <p>20 THE WITNESS: Answer?</p> <p>21 MS. ANDERSON: Yes, I'm sorry.</p> <p>22 You can answer. I'm sorry.</p> <p>23 THE WITNESS: I have no recall</p> <p>24 of ever asking anybody to look at</p> <p>25 retail pricing.</p>
Page 199	Page 201
<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Catherman-25?</p> <p>3 A. That he had informed myself and</p> <p>4 others that the meeting occurred and that</p> <p>5 USDA was supportive of the verified program</p> <p>6 and that they had, during their session,</p> <p>7 explained to the participants in the meeting</p> <p>8 some information about our verified program.</p> <p>9 Q. Do you recall anything else</p> <p>10 about your discussion with Mr. Klippen</p> <p>11 regarding this meeting?</p> <p>12 A. No.</p> <p>13 MR. BROWN: If we could go off</p> <p>14 the record and take a quick break,</p> <p>15 please.</p> <p>16 VIDEOGRAPHER: The time is</p> <p>17 2:53:44. Off the record.</p> <p>18 - - -</p> <p>19 (A recess was taken.)</p> <p>20 - - -</p> <p>21 VIDEOGRAPHER: On the record.</p> <p>22 The time is 3:04:03.</p> <p>23 MR. BROWN: This is Stephen</p> <p>24 Brown, I have no further questions.</p> <p>25 We're going to pass now to the IPPs.</p>	<p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 BY MR. ESSENMACHER:</p> <p>3 Q. My next question, did you or</p> <p>4 did you direct anyone to conduct a study on</p> <p>5 retail sales of shell eggs based on consumer</p> <p>6 demographics?</p> <p>7 MS. SMITH: Objection on the</p> <p>8 basis of downstream.</p> <p>9 MS. ANDERSON: And I object to</p> <p>10 the form of the question, because I</p> <p>11 don't understand it, but you can</p> <p>12 answer the question if you do.</p> <p>13 THE WITNESS: I've never</p> <p>14 directed anybody to do retail surveys,</p> <p>15 so no matter what the subject is, a</p> <p>16 retail survey, I don't think I've ever</p> <p>17 been involved in that.</p> <p>18 MR. ESSENMACHER: That was my</p> <p>19 final question. Thank you, Mr.</p> <p>20 Catherman, for your time and energy in</p> <p>21 this effort.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 MS. ANDERSON: Is that all from</p> <p>24 the plaintiff's side?</p> <p>25 MR. ARANOFF: Unless there's a</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 202</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 redirect, that's it.</p> <p>3 MS. ANDERSON: Mr. Barnes I</p> <p>4 think has some questions for Rose</p> <p>5 Acre.</p> <p>6 MR. BARNES: Yes, I do.</p> <p>7 MS. ANDERSON: You didn't</p> <p>8 realize that everyone was going to get</p> <p>9 to talk to you today.</p> <p>10 THE WITNESS: I'm fine with</p> <p>11 that. I'm here until you run out of</p> <p>12 time.</p> <p>13 MS. ANDERSON: No, you're not</p> <p>14 actually. You're only here for seven</p> <p>15 hours.</p> <p>16 THE WITNESS: When you run out</p> <p>17 of time I meant to say.</p> <p>18 - - -</p> <p>19 EXAMINATION</p> <p>20 - - -</p> <p>21 BY MR. BARNES:</p> <p>22 Q. Mr. Catherman, good afternoon.</p> <p>23 My name is Don Barnes. I represent Rose Acre</p> <p>24 Farms. We are also a defendant in this</p> <p>25 litigation.</p>	<p style="text-align: right;">Page 204</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 marketing license to sell certified eggs. Is</p> <p>3 that correct?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall what period of</p> <p>6 time that was?</p> <p>7 A. If I recall, it was during the</p> <p>8 transitional period while we had already</p> <p>9 signed up to the program until we were</p> <p>10 100 percent through the transitional period</p> <p>11 that we had agreed with UEP for changing the</p> <p>12 density of our company facilities.</p> <p>13 Q. Now, I realize you're no longer</p> <p>14 employed by Michael Foods, but during the</p> <p>15 time of your employment, did Michael Foods</p> <p>16 market certified, UEP certified eggs and</p> <p>17 non-UEP certified eggs?</p> <p>18 MS. ANDERSON: Let me just</p> <p>19 quickly object. He is employed by</p> <p>20 Michael Foods.</p> <p>21 MS. SMITH: Objection.</p> <p>22 THE WITNESS: A correct --</p> <p>23 correct actually a prior reference</p> <p>24 earlier today I was referenced as a</p> <p>25 consultant. Now I'm just a part-time</p>
<p style="text-align: right;">Page 203</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Have we met before today?</p> <p>3 A. No.</p> <p>4 Q. In your prior testimony in</p> <p>5 response to a question by Mr. Brown, one of</p> <p>6 your answers referred to a marketing license,</p> <p>7 and this was in the time period April 2005,</p> <p>8 you testified that Michael Foods was not yet</p> <p>9 a certified producer nor did you have a</p> <p>10 marketing license. Do you recall generally</p> <p>11 that testimony?</p> <p>12 MR. BROWN: Objection.</p> <p>13 THE WITNESS: I recall that,</p> <p>14 yes, there was a question about</p> <p>15 marketing license.</p> <p>16 BY MR. BARNES:</p> <p>17 Q. Yes.</p> <p>18 A. And, yes, there was a period</p> <p>19 where Michael Foods operated with a marketing</p> <p>20 license and a period when we did not before</p> <p>21 we were a certified producer which was in --</p> <p>22 sometime in 2006.</p> <p>23 Q. You're clairvoyant because you</p> <p>24 anticipated my next question. So there did</p> <p>25 come a point in time when you operated with a</p>	<p style="text-align: right;">Page 205</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 employee working at the pleasure of</p> <p>3 Terry Baker and his demand with some</p> <p>4 very finite, detailed limitations.</p> <p>5 Yes, Michael Foods has and</p> <p>6 continues today to sell non-certified</p> <p>7 egg products.</p> <p>8 BY MR. BARNES:</p> <p>9 Q. Together with certified egg</p> <p>10 products?</p> <p>11 MS. SMITH: Objection.</p> <p>12 THE WITNESS: Yes.</p> <p>13 BY MR. BARNES:</p> <p>14 Q. You previously testified</p> <p>15 Michael Foods ultimately became a member or a</p> <p>16 participant in the UEP Certified Program.</p> <p>17 Correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you recall that in order to</p> <p>20 become a participant in the UEP Certified</p> <p>21 Program, Michael Foods complied with a</p> <p>22 phase-in schedule to become certified? Do</p> <p>23 you recall that?</p> <p>24 A. Yes. The phase-in schedule was</p> <p>25 around the density of the layers. All other</p>

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## HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 206</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 parts of the program were immediately</p> <p>3 effective.</p> <p>4 Q. So at least as to the density</p> <p>5 of the layers -- you mean cage space. Is</p> <p>6 that correct?</p> <p>7 A. Correct.</p> <p>8 Q. So as to the cage space</p> <p>9 requirements of the program, Michael Foods</p> <p>10 ultimately complied with a phase-in schedule</p> <p>11 to become fully certified. Is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. At another point in your</p> <p>14 testimony, Mr. Catherman, and at this point</p> <p>15 in time you were talking about Exhibit 4, and</p> <p>16 you don't have to look at it, I'm just trying</p> <p>17 to set the scene for my question. In the</p> <p>18 period of time around November 2004, that's a</p> <p>19 period of time that I'm going to ask you</p> <p>20 about. In response to a question from</p> <p>21 plaintiff's counsel, you said that around</p> <p>22 that period of time Michael Foods would have</p> <p>23 been expanding its egg supply. Do you recall</p> <p>24 generally that testimony?</p> <p>25 A. I remember mentioning earlier</p>	<p style="text-align: right;">Page 208</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 was marked for identification.)</p> <p>3 - - -</p> <p>4 BY MR. BARNES:</p> <p>5 Q. Mr. Catherman, the court</p> <p>6 reporter has marked a document, a multi-page</p> <p>7 document as Exhibit 26. It bears two</p> <p>8 document identification numbers. I'll only</p> <p>9 refer to the Michael Foods number which is</p> <p>10 MFI0033487 up to and including 488. And I do</p> <p>11 have another --</p> <p>12 MR. BARNES: Mr. Brown, I'm</p> <p>13 sorry, I do have a copy for you. I</p> <p>14 apologize. It was stuck to my</p> <p>15 reference copy.</p> <p>16 MR. BROWN: Thank you, sir.</p> <p>17 BY MR. BARNES:</p> <p>18 Q. Exhibit 26 appears to be an</p> <p>19 e-mail chain. The e-mail at the very top</p> <p>20 appears to be from Terry Baker, dated</p> <p>21 June 12, 2006, to a number of recipients</p> <p>22 including you. Do you recall receiving this</p> <p>23 e-mail chain from Mr. Baker?</p> <p>24 A. Not exactly.</p> <p>25 Q. Now, in the first, the very</p>
<p style="text-align: right;">Page 207</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 today that, yes, Michael Foods has</p> <p>3 continually increased its supply network.</p> <p>4 Q. Do you recall other UEP members</p> <p>5 who were acting like Michael Foods and</p> <p>6 continually increasing their supply?</p> <p>7 MS. SMITH: Objection.</p> <p>8 THE WITNESS: Yes, I believe</p> <p>9 there were other companies that were</p> <p>10 growing by additional capacity by</p> <p>11 adding additional layers.</p> <p>12 BY MR. BARNES:</p> <p>13 Q. Can you recall any companies in</p> <p>14 particular?</p> <p>15 A. One in particular would be Rose</p> <p>16 Acres.</p> <p>17 Q. Mr. Catherman, I'm going to</p> <p>18 show you a document which we will mark as --</p> <p>19 what's our next number?</p> <p>20 MS. ANDERSON: 25.</p> <p>21 THE WITNESS: 26.</p> <p>22 MS. ANDERSON: 26.</p> <p>23 - - -</p> <p>24 (Exhibit Catherman-26, E-mail</p> <p>25 chain, Bates MFI0033487 &amp; MFI0033488,</p>	<p style="text-align: right;">Page 209</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 first e-mail at the top, Mr. Baker's e-mail</p> <p>3 to you and others dated June 12, 2006, Mr.</p> <p>4 Baker says, "We know Rose Acre is moving</p> <p>5 forward with the N. Carolina facility." Do</p> <p>6 you see that?</p> <p>7 A. Yes.</p> <p>8 Q. What's your understanding of</p> <p>9 the N. Carolina facility of Rose Acre Farms?</p> <p>10 A. They were going to construct, I</p> <p>11 believe, a -- it was either a 4 -- a 2 or a 4</p> <p>12 million layer in-line shell egg layer</p> <p>13 facility in North Carolina.</p> <p>14 Q. And is that referred to in the</p> <p>15 third e-mail from the top from Mr. Mike</p> <p>16 Vanderpol dated June 11, 2006, to Mr. Baker</p> <p>17 with a copy to you?</p> <p>18 A. Yes.</p> <p>19 Q. That's the Rose Acre North</p> <p>20 Carolina expansion that you just testified</p> <p>21 to. Is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know if that actually</p> <p>24 took place?</p> <p>25 A. Yes, it did. I don't know</p>

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<p style="text-align: right;">Page 210</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 exactly the timing of the construction or</p> <p>3 housing.</p> <p>4 MR. BARNES: Mr. Catherman,</p> <p>5 thank you very much for your patience.</p> <p>6 I have no further questions.</p> <p>7 MS. ANDERSON: Does anyone on</p> <p>8 the phone have any further questions?</p> <p>9 - - -</p> <p>10 EXAMINATION</p> <p>11 - - -</p> <p>12 BY MS. ANDERSON:</p> <p>13 Q. I just have one general</p> <p>14 question, Mr. Catherman, to follow up on some</p> <p>15 of the questions that Mr. Brown asked you</p> <p>16 earlier today regarding documents that</p> <p>17 Mr. Klippen -- or excuse me, e-mails that</p> <p>18 Mr. Klippen would send to you that you</p> <p>19 forwarded on.</p> <p>20 In Mr. Klippen's role as an</p> <p>21 outside consultant, he had opportunity -- did</p> <p>22 he have opportunity to send you documents</p> <p>23 relating to his efforts on behalf of Michael</p> <p>24 Foods?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 212</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 MS. ANDERSON: I think we are</p> <p>3 done, Mr. Catherman. Thank you.</p> <p>4 Thank you, Linda and Tim.</p> <p>5 THE WITNESS: Thank you.</p> <p>6 VIDEOGRAPHER: This ends disc</p> <p>7 number five and concludes the</p> <p>8 testimony of Toby Catherman in the</p> <p>9 matter of Processed Egg Products. The</p> <p>10 date is March 18, 2014. The time is</p> <p>11 3:21:26. Off the record.</p> <p>12 - - -</p> <p>13 (Witness excused.)</p> <p>14 - - -</p> <p>15 (Deposition concluded at 3:21</p> <p>16 p.m.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 211</p> <p>1 TOBY LEE CATHERMAN - HIGHLY CONFIDENTIAL</p> <p>2 Q. Did you -- you stated earlier,</p> <p>3 did you not, that you did not edit</p> <p>4 Mr. Klippen's work. Is that correct?</p> <p>5 A. Correct. I am a strong</p> <p>6 believer that if you have a consultant,</p> <p>7 you're paying them for a reason.</p> <p>8 Q. So you would forward on Mr.</p> <p>9 Klippen's documents to other members of the</p> <p>10 working group regardless of whether you</p> <p>11 agreed with his opinions?</p> <p>12 A. Yes.</p> <p>13 MS. ANDERSON: I have no further</p> <p>14 questions.</p> <p>15 MR. ARANOFF: We'll take five</p> <p>16 just to see if we want to redirect.</p> <p>17 VIDEOGRAPHER: The time is</p> <p>18 3:15:54. Off the record.</p> <p>19 - - -</p> <p>20 (A recess was taken.)</p> <p>21 - - -</p> <p>22 VIDEOGRAPHER: On the record.</p> <p>23 The time is 3:20:59.</p> <p>24 MS. SMITH: Plaintiffs have no</p> <p>25 further questions.</p>	<p style="text-align: right;">Page 213</p> <p>1</p> <p>2 C E R T I F I C A T E</p> <p>3</p> <p>4</p> <p>5 I do hereby certify that I am a Notary</p> <p>6 Public in good standing, that the aforesaid</p> <p>7 testimony was taken before me, pursuant to</p> <p>8 notice, at the time and place indicated; that</p> <p>9 said deponent was by me duly sworn to tell</p> <p>10 the truth, the whole truth, and nothing but</p> <p>11 the truth; that the testimony of said</p> <p>12 deponent was correctly recorded in machine</p> <p>13 shorthand by me and thereafter transcribed</p> <p>14 under my supervision with computer-aided</p> <p>15 transcription; that the deposition is a true</p> <p>16 and correct record of the testimony given by</p> <p>17 the witness; and that I am neither of counsel</p> <p>18 nor kin to any party in said action, nor</p> <p>19 interested in the outcome thereof.</p> <p>20</p> <p>21 WITNESS my hand and official seal this</p> <p>22 26th day of March, 2014.</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: center;">_____ Notary Public</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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## INSTRUCTIONS TO WITNESS

4 Please read your deposition over  
5 carefully and make any necessary corrections.  
6 You should state the reason in the  
7 appropriate space on the errata sheet for any  
8 corrections that are made.

9 After doing so, please sign the errata  
10 sheet and date it.

11 You are signing same subject to the  
12 changes you have noted on the errata sheet,  
13 which will be attached to your deposition.

14 It is imperative that you return the  
15 original errata sheet to the deposing  
16 attorney within thirty (30) days of receipt  
17 of the deposition transcript by you. If you  
18 fail to do so, the deposition transcript may  
19 be deemed to be accurate and may be used in  
20 court.

## ERRATA SHEET

IN RE: PROCESSED EGG PRODUCTS ANTITRUST LITIGATION

DATE: 3/18/14

PAGE	LINE	CORRECTION AND REASON
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25 (DATE) TOBY LEE CATHERMAN

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## ACKNOWLEDGMENT OF DEPONENT

3 I have read the foregoing transcript of  
4 my deposition and except for any corrections or  
5 changes noted on the errata sheet, I hereby  
6 subscribe to the transcript as an accurate record  
7 of the statements made by me.

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9  
10

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TOBY LEE CATHERMAN

12 SUBSCRIBED AND SWORN before and to me  
13 this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

14  
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17

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NOTARY PUBLIC

20 My Commission expires: